

Town of Freedom
Regular Board Meeting
Monday, July 15, 2019

Board Members Present: Jolene Esposito, Ron Ashworth, John Hill, Ann Marie Dixon,
and Supervisor Randy Lester

Other Officials: Highway Superintendent Jim Haggerty, Justice Gary Chamberlain,
Planning Board Member DeVere Bliss, Planning Board Member Jim Shannon,
and Town Attorney James McAuley

Others:23

Meeting called to order at 7:00pm by Supervisor Randy Lester

I. **PLEDGE TO THE FLAG:** Led by Supervisor Randy Lester

II. **REVIEW OF MINUTES:**

Town Board Meeting Minutes from June 17, 2019

A motion was made by Ann Marie Dixon to accept the Meeting minutes of June 17, 2019
as submitted. Motion seconded by Ron Ashworth.

Roll Call: Ayes-4 Jolene Esposito, Ron Ashworth, Ann Marie Dixon,
and Supervisor Randy Lester
Abstain- 1 John Hill

A motion was made by Ann Marie Dixon to accept the Special Board Meeting minutes of
July 1, 2019 as submitted. Motion seconded by Ron Ashworth.

Roll Call: Ayes-4 Ron Ashworth, John Hill, Ann Marie Dixon
and Supervisor Randy Lester
Abstain-1 Jolene Esposito

III.

TOWN OF FREEDOM

RESOLUTION # 6-2019

July 15, 2019

**Whereas, the County of Cattaraugus and its municipalities are empowered to enter
into joint service contracts pursuant to Article Five-G of the General Municipal
Law, and**

**Whereas, Real Property Tax Law Section 1537 makes provision for the County to
provide assessing services to its municipalities.**

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Now, therefore be it resolved that the Town Supervisor is hereby authorized to execute a contract with Cattaraugus County to enter into the above named contractual arrangement for the term of October 1, 2019 through September 30, 2025.

Motion by: Ann Marie Dixon, Seconded by Ron Ashworth

Roll call:

Esposito-Craft: Aye

Ashworth: Aye

Hill: No

Dixon: Aye

Lester: Aye

Clerk: Mindy M. Miller Date: 07/15/2019

IV. TOWN OF FREEDOM

RESOLUTION # 7-2019

July 15, 2019

A Resolution Transferring Funds

The Town Board of the Town of Freedom, pursuant to Town Law Section 112, Paragraph 1 wishes to:

Transfer funds from:
Highway Savings Account in the amount of \$135,010.00

To:
DA5130.4 (Machinery Contractual Exp.) to cover the purchase of the 2020 Kenworth T800 Truck as set forth in Highway Voucher #107.

Motion by: John Hill, Seconded by Ann Marie Dixon

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Roll call:

Esposito-Craft: Aye

Ashworth: Aye

Hill: Aye

Dixon: Aye

Lester: Aye

Clerk: Maureen Hill Date: 07/15/2019

V. Board Discussion of Host Community Agreement and Road Agreement-

Supervisor Randy Lester asked for further discussion. Randy stated it was the latest addition. Minor change the financials have gotten better. First year payment will be \$508,500.000 and by 20 years \$740,788.000. The Town of Freedom would receive a little over twelve million dollars. That's for the Town of Freedom only, not County and not the Schools. Councilmen John Hill asked when was the latest edition submitted. Randy said either Sunday or Monday morning, he said it's identical to the prior ones except the amounts. John felt that the Town Board should read it before they discuss it. Councilwomen Ann Marie Dixon stated that the July 1st meeting she was out of town and when she came back she read the Host Community Agreement. Then she meet with Randy and he filled her in. Ann had a few concerns so she contracted Valessa from Invenergy. One concern was they offered \$485,000 bottom line. The Towns budget is \$508,000. This would not include the fire contracts. She stated she was also concern with page 5 (D) in the Host Community Agreement. She's concerned about the Town being protected if they sign this amount and other Towns get more money, is the Town of Freedom stuck with the amount agreed on. Ann stated that Valessa changed it to were other Towns negotiate higher amount the Town of Freedom will get the higher amount as well. Also Valessa changed it from 3,600 to 3,800. John stated that he had not had an opportunity to read this and he was being asked to consider something he has not read yet. Councilwomen Jolene Esposito said she does not feel comfortable voting on something that been changed when she has not had time to read it. John said to Ann that at the last Board Meeting Ann said that the Town should wait on this to see what happens with Farmersville. John asked her what changed. Ann explained that she read the Host Community Agreement over, she was going to come to the meeting and abstain but after she talked with Invenergy she saw the proof in the updated Host Community Agreement and she felt comfortable. John asked Ann again what changed her mind. Ann responded if Farmersville gets a higher amount the Town of Freedom is protected in the clause that we will get the same amount. John said the only thing your concern about is the amount of money the Town is getting from Invenergy. Ann said no. Ann went on to explain that financials was a big concern for her. She did not want the Town to get stuck if other Towns get a better deal. John has an issue with Page 7 (D) because it basically says the Town can get sued if Laws are changed to make them more safer, better safety and

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welfare of every individual in the Town. Ann said she called Town Attorney Jim McAuley after she read the updated version and asked if we are legally bound and if this is legal, he said it was. John asked why would the Town get into agreement if a Law changes the Town can be sued? Jim McAuley stated just like when the Town signs agreement with the County, look at the fine paper work of it. They have the right to sue the Town and a right to walk away from it. This is standard in all agreements whether it be a municipality or government. The term is called investment back expectation, that's to protect themselves so they have legal rights. Aaron from Invenergy said that these provisions are designed to avoid disputes, because both parties are pledging not to do anything to interfere it.

Road Use Agreement-Highway Superintended Jim Haggerty and Randy meet in the Town of Farmersville a few months ago and went through all the roads they wanted to use. Randy introduced David Britton from GHD. David a civil engineer, licensed. His company in North America has over 60 offices with his firm. He's been involved with wind development projects across New York State. He states not just the assessment under home rule, assessment permitting, as well as construction assistance and monitoring. He has lots of experience with road project teams of engineers and inspectors that assist Dave, and communities through the process. Article 10 is a different he stated, it started in 2012. The Road use Agreement is important to be incorporated. Dave meet with his inspectors and Jim Haggerty and they sat down went through the roads they intend to use as well as routes. Also offered advice to what to expect. Finding out about the roads for the future evaluations. John Hill asked the weight on the bridges especially on Town bridges is the Town going to see them be reinforced when they are bringing heavy equipment over top of them. Dave said there is a possibility of this, they do a precondition road survey and they include the structures, culverts and bridges. They looked at the condition and the lower grading for them as well. Any sort of reinforcement activities that is necessary to bring in heavy equipment. Sometimes those structures can be replaced. They look at the best routes for them. Part of the original assessment is the structure and the capability of the existing roads that can handle, the stone, and concrete. They also look at what they need to do to reinforce them roads as well. Dave firmly believes in protecting the roads. John asked what goes his group specialize in? The company Dave works for has resources for almost everything. They have 9,000 employees. The Buffalo office does a lot of municipality work. Dave is a Town and Village engineer for several communities. John asked about the utilities and going under roads, how is it considered when heavy equipment is being brought in. Dave said only horizontal direction is allowed, unless there is an unusual circumstance. The permit and the push will be for horizontal direction drill, and they will push right under. Ann Marie asked if they can't go underground they go over. John said our Law says all power lines have to be underground. Jim McAuley said it would have to be an unusual circumstance. Lines underground is environmentally friendlier. McAuley added that when spectrum came through they put their wires up all over because Federal Law said they could put them up. With this project there is more control and is better to put them underground. Dave explained with the Road Use Agreement they come and do a pre condition

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assessment, visual and video. Then that report goes to the Highway Superintendent for feedback. Then once everyone agrees to pre condition, they use that to develop the reinforcement activity. Then the reinforcement gets put into a second report. Then they build the project. After that there is a post construction assessment evaluation. Then there is a list of repair work that needs to be done. From Dave's experience every project he has seen the Towns get better then what they have had before. That also gets documented in the post construction activity report. John said as for the Road Use Agreement they bring it to as good or better then it was, is there an upper limit on the amount of money they have to spend, example if they take out a bridge. Jim McAuley said he believes there is a limit but if they take a bridge out then the Town can sue them as well. Aaron stated basically for the situation John asked about if something like this happens, they break it they rebuild it. John Hill wants to make sure the Town is protected. He has no issue with the Road Use Agreement.

A motion was made by Ann Marie Dixon to retain David Britton as an Engineering Consultant on Road Use. Seconded by Ron Ashworth

Roll Call: Ayes-5 Jolene Esposito, Ron Ashworth, John Hill, Ann Marie Dixon
and Supervisor Randy Lester

VI. A motion was made by John Hill to have a moratorium on the Host Community Agreement. Seconded by Jolene Esposito

Roll Call: Ayes-2 Jolene Esposito, John Hill
No- 3 Ron Ashworth, Ann Marie Dixon, and Supervisor Randy Lester

VII.

TOWN OF FREEDOM

RESOLUTION # 8-2019

July 15, 2019

Host Community Agreement and Road Agreement

See Attached

Motion by: Ron Ashworth, Seconded by Ann Marie Dixon

Roll call:

Esposito-Craft: NO

Ashworth: YES

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Hill: NO

Dixon: YES

Lester: YES

Clerk: Maureen Hill Date: 07/15/2019

VIII. NEW BUSINESS:

1. Highway building overhead door repair/ replacement discussion, Supervisor Randy Lester explained a door in the Highway Garage broke. Highway Superintendent Jim Haggerty said the Cable and the balance are shot. He got two bids one to repair at \$2,118.24 and one to replace at \$4,100 for brand new door with everything. Councilwomen Jolene Esposito asked how old is the door? Jim said as old as the building.

A motion was made by Ron Ashworth to replace the overhead door in Highway building. Seconded by Jolene Esposito.

Roll Call: Ayes-5 Jolene Esposito, Ron Ashworth, John Hill, Ann Marie Dixon, and Supervisor Randy Lester

IX. Public Comments:

Denise Willard- Asked Councilwomen Ann Marie Dixon when the Host Community Agreement first came out Ann said she wanted to set up a panel? Ann said she did. Denise said Farmersville has not even got a wind law so what was the big hurry? Supervisor Randy Lester stated that we are moving along. Denise stated that she just found out about this and there are still people finding out about this. Denise expressed that she very angry and wanted to know about the panel? Ann stated that at the last Board Meeting Councilmen John Hill suggested to have Councilwomen Jolene Esposito and Randy to meet with Invenergy. Ann said she was out of town and Jolene could not make it to the meeting, Ann was not sure about John, but that was kind of the panel representing both sides. Denise stated that at the June 11 meetings held at the Arcade Fire Hall and Pioneer Central School the Towns were talking about the money. She said the majority of the residences were opposed at the two meeting that day. They had more concern about the quality of life. She stated the Town is throwing away the quality of life.

Stephanie Milks- Is requesting for further setbacks because the Town Board needs to know that there are safety issues. There are safety issues the Board really needs to

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take into account and write into this law. Stephanie stated that on June 13, 2003 Planning Board Member De Vere Bliss VS. Village of Arcade due to a lawsuit for stray voltage. (See attached) Stephanie said that this was not a electric generated turbine but with a setback being 660ft from someone property this could affect a person. Stephanie wants the Town Board to protect all of the residence here in this Town. This is not about who's for or against wind turbines. Stephanie told Randy that he's failing the residence repeatedly. Stephanie said when there are bigger issues the Town Board and Planning Board need to think what will go on.

X. REPORTS & COMMUNICATIONS:

- A) Assessors –
- B) Building Committee –
- C) Building Inspector – Report Submitted.
- D) Highway Superintendent – Report submitted.
- E) Clerk/Collector – Report Submitted.
- F) Constable –
- G) DCO –
- H) Highway Committee –
- I) Insurance Committee-
- J) Justices –
- K) Planning Board- Meeting July 25, 2019 at the Town Of Eagle Public Hearing on Solar Energy
- L) Parks & Recreation- Councilwomen Ann Marie Dixon talked to Rec Director Tanya Siddle about some vandalism at the park also drug paraphernalia was found. She talked to Randy about this and they suggested to call the police. Highway Superintendent Jim Haggerty also built a nice sandbox and that is getting vandalized as well.
- M) Supervisor – Report Submitted.
- N) Other Town Officials –

A motion to accept the reports & communications as submitted was made by Ann Marie Dixon. Seconded by Jolene Esposito.

Roll Call: Ayes-5 Jolene Esposito, Ron Ashworth, John Hill, Ann Marie Dixon and Supervisor Randy Lester

XI. APPROVAL OF VOUCHERS:

General #175 to # 194, Amt. \$11,961.95 Yrly Amt. \$139,468.81

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Motion made by Jolene Esposito to accept the General vouchers as written.
Seconded by Ron Ashworth.

Roll Call: Ayes-4 Jolene Esposito, Ron Ashworth, Ann Marie Dixon
and Supervisor Randy Lester
Abstain-1 John Hill

Highway #91 to #109, Amt. \$244,527.74, Yrly Amt. \$385,294.02.

Motion made by Ron Ashworth to accept the Highway vouchers as written.
Seconded by Ann Marie Dixon.

Roll Call: Ayes-5 Jolene Esposito, Ron Ashworth, John Hill, Ann Marie Dixon
and Supervisor Randy Lester

XII. Councilwomen Ann Marie Dixon read her resignation to the Town Board and the Town of Freedom Residence effective August 1st 2019. She asked for this to be on record it's not about wind turbines why she's moving.

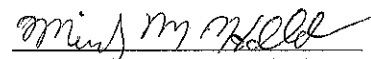
Ron Ashworth made a motion to except Ann Marie Dixon resignation. Seconded by Randy Lester.

Roll Call: Ayes-4 Jolene Esposito, Ron Ashworth, John Hill,
and Supervisor Randy Lester
Abstain-1 Ann Marie Dixon

XIII. ADJOURNMENT: Ron Ashworth made the motion to adjourn the meeting at 8:03 pm. Seconded by Jolene Esposito.

Roll Call: Ayes-5 Jolene Esposito, Ron Ashworth, John Hill,
Ann Marie Dixon and Supervisor Randy Lester

Respectfully Submitted by



Freedom Town Clerk

07/26/2019

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Bliss v. Village of Arcade
New York
June

Bliss v. Village of Arcade

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Appellate Division of the Supreme Court of New York, Fourth Department Jun 13, 2003

306 A.D.2d 902 (N.Y. App. Div. 2003)

306 A.D.2d 902 · 761 N.Y.S.2d 573

Attorney info

MEMORANDUM AND ORDER

It is hereby ORDERED that the order so appealed from be and the same hereby is unanimously affirmed without costs.

Memorandum:

Plaintiff, a dairy farmer who purchases electricity from defendant, commenced this action alleging that his dairy herd has been damaged by stray electricity negligently disseminated by defendant. He appeals from an order granting defendant's motion to dismiss claims for punitive damages and for compensatory damages arising more than 90 days before service of the notice of claim (see General Municipal Law 50-e, 50-i) and denying plaintiff's cross motion for leave to serve a late amended notice of claim and a second amended complaint.

We reject plaintiff's contention that, because the sale of electricity is a proprietary function, defendant is subject to punitive damages and may be sued without serving a notice of claim. Even when the alleged negligence arises from the performance of a proprietary function, "the goals of punishment and deterrence are not served when punitive damages are imposed against [a municipality], for in such circumstances, it ultimately is [still] the innocent taxpayer who is punished" (*Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 70 N.Y.2d 382, 386; see *Sharapata v. Town of Islip*, 56 N.Y.2d 332, 338). Furthermore, a timely notice of claim is a condition precedent to any "action or special proceeding * * * against a * * * village * * * for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act

damage to real or personal property alleged to have been sustained by reason of the negligence or management of such * * * village" (General Municipal Law 50-i), regardless of whether the village is alleged to have acted in a proprietary capacity.

We also reject plaintiff's contention that defendant is estopped from asserting a statute of limitations defense. "[T]here is nothing in the record to indicate that [defendant] in any way prevented plaintiff from commencing a timely action against [it]" (*Filigree Films, Inc., Pension Plan v. CBC Realty Corp.*, 229 A.D.2d 862, 863).

Finally, while not dispositive of the issues raised herein, we note our disagreement with Supreme Court's conclusion that, because defendant was not making a profit, it was not performing a proprietary function when it sold electricity. The determination whether a municipality was acting in a proprietary capacity does not turn on whether the municipality profited from its actions. Purely governmental functions are "undertaken for the protection and safety of the public pursuant to the general police powers" (*Balsam v. Delma Eng'g Corp.*, 90 N.Y.2d 966, 968). "On the opposite periphery lie proprietary functions in which governmental activities essentially substitute for or supplement 'traditionally private enterprises'" (*Sebastian v. State of New York*, 93 N.Y.2d 790, 793, quoting *Riss v. City of New York*, 22 N.Y.2d 579, 581). "To pinpoint a spot along the continuum where a complained-of act should be categorized to decide a case and to maintain principled consistency, courts must examine "the specific act or omission out of which the injury is claimed to have arisen and the capacity in which that act or failure to act occurred"" (*Sebastian*, 93 N.Y.2d at 794, quoting *Miller v. State of New York*, 62 N.Y.2d 506, 513). Plaintiff claims that he suffered damages arising from the negligent maintenance or repair of defendant's power lines. That activity was not undertaken for the protection or safety of the public and therefore must be considered proprietary (see *Johnson City Cent. School Dist. v. Fidelity Deposit Co. of Maryland*, 272 A.D.2d 818, 821).