DRAFT MINUTES
Special Joint Meeting of
MANLIUS TOWN BOARD & ZONING BOARD OF APPEALS
September 11, 2014

The Town of Manlius Town Board and Zoning Board of Appeals assembled for a joint special meeting of the said boards at the Town Hall, 301 Brooklea Drive, Fayetteville, New York, ; and with Supervisor Edmond Theobald presiding and the following Town Board members present:

John R. Loeffler, Councilor
David M. Marnell, Sr., Councilor
Nicholas J. Marzola, Councilor
Jason Cassalia, Councilor
Vincent Giordano, Councilor
Karen Green, Councilor;

and with Chairman Henry McIntosh presiding and the following Zoning Board of Appeals members present:

Al Ruthig, Member
T. R. Schepp, Member (at 7:16 pm, see following)
James Campbell, Member
KP Kelly, Member

The following Town Officers/personnel were present:

Steven Primo, Attorney for the Town
Fran Marlowe, Manlius Police Chief
Ann Oot, Town Manager
Allison A. Edsall, Town Clerk
Deborah Demmon, ZBA Secretary

Other persons attending:

Elaine Tummino, Jason Emerson, Eagle Bulletin, Martha Dygert Village of Manlius Clerk, Jerry & Judy Dardzinski, Matt Kerwin, Paul Whorrall Village of Manlius Mayor, and M P Serafin.

1. The Pledge of Allegiance

Supervisor Theobald, called the meeting to order at 7:00 pm. Pledge of Allegiance was recited. Supervisor Theobald welcomed everyone and thanked all for attending.

A moment of silence was held in remembrance of all those who lost their lives during the September 11, 2001 attacks.

2. Joint Meeting

Supervisor Theobald reviewed the Town rules of decorum advising that same would be applicable to this special joint meeting of the Town Board and the Zoning Board of

Appeals, it however also being the respective boards intent that all those wishing to be heard would have the opportunity to speak at this meeting as long as relevant to the matters as described in the notice of joint special meeting and as further elaborated on by Attorney Primo this evening.

Attorney Primo apologized to the Chair and Zoning Board of Appeals members for the late actual notice of this re-scheduled meeting he understood some had received, and thanked everyone for attending.

Attorney Primo stated that this meeting is in response to the determinations made under two separate resolutions adopted by the Village of Manlius Board of Trustees (on June 24, 2014) that asserted the Villages' sovereign immunity relative to Town zoning and planning jurisdiction, and declared SEQRA lead agency status all as relates to the proposed Village combined fire house project described generally as a 20,000 sq. ft. building to be located on an approximate 4 acre parcel situate on the southwest corner of Enders Rd. and NYS Rte. 92. The Village has seemingly asserted, by its resolution of sovereign immunity, that it is exempt from the Town's zoning and planning jurisdiction and the procedural and substantive requirements under the Town Zoning Code.

Attorney Primo added that the effect of the separate resolution passed by the Village of Manlius regarding SEQRA would now, it appears, mean not only that the Town would not act as lead agency, but as most recently proposed by Village counsel, not even have involved agency status for purposes of SEQRA review.

Attorney Primo discussed an attorney client privileged (labeled) memorandum dated September 5, 2014 prepared by he and co-counsel for the respective boards use in this meeting and that clarifies the criteria required to be considered for a determination of sovereign immunity under the law. Attorney Primo reviewed the substantive balancing test factors established by the Monroe County Case (*Matter of County of Monroe City of Rochester, 72 N.Y.2d 338, 533 N.Y.S. 2d 702*) and advised that the same notwithstanding, procedurally the law is not that clear on how the balancing test criteria should be applied and, thus the Town referred to publications by New York Department of State Office of Local Government, and on this procedural issue one in particular entitled *James A. Coon Government Technical Series, Governmental Immunity from Zoning* . The publications were included as attachments to Attorney Primo's memorandum prepared for board members

Attorney Primo explained that the boards met earlier this evening (at 6:30 pm), under advice of counsel, so that the memorandum and attachments aforementioned could be explained, and where helpful referencing some case examples. He further explained that this was not an executive session, but is a specifically permitted opportunity for the respective boards to obtain advice of legal counsel. As such it had been made clear at the outset that there was to be no deliberation or similar discussions amongst the Board Members except for questions to the attorney regarding clarification of the procedure and criteria to be applied in the board's deliberations.

Attorney Primo advised that at the close of tonight's meeting, each board is going to be asked to consider a resolution on this jurisdictional issue and should utilize comments

from the public to assist in coming to a conclusion on the jurisdictional issue. Attorney Primo, prior to outlining the balancing test criteria stated that none of the criteria are independently more important than the other, and that there need not be a finding that part or all of the same need be satisfied or not satisfied; simply that the criterion each be considered and given appropriate weight as determined by the respective boards

Attorney Primo reviewed the 9 balancing test factors:

1) The nature and scope of the instrumentality seeking immunity
2) The encroaching government's legislative grant of authority
3) The kind of function or land use involved
4) The effect local land use regulation would have upon the enterprise concerned
5) Alternative locations for the facility in less restrictive zones
6) The impact on legitimate local interests
7) Alternative methods of providing the proposed improvement
8) The extent of the public interest to be served by the improvements; and
9) Intergovernmental participation in the project development process and an opportunity to be heard.

Attorney Primo reiterated that pursuant to the resolutions the Village of Manlius adopted, as to SEQRA review the Town of Manlius would not be an involved agency. As relates to the zoning and planning regulations and jurisdictional issues , there is some language in the resolution that indicates the Village would be receptive to some input from the Town during the planning process however there is nothing binding in the resolution that indicates the Town would have jurisdictional authority and input in the planning process.

ZBA Member T.R. Schepp entered the meeting at 7:16 PM

Councilor Loeffler asked, in reference to the balancing test, is there potentially a difference, whether it is positive or negative, of the impact of the process being completed one way over another. It's not a consideration of the proposal at all, but rather a consideration of what way the process is done?

Attorney Primo stated he felt there is supposed to be consideration of the substance of the project proposed to the extent that the Board has this type of specific knowledge of the project. Attorney Primo discussed examples of projects in other municipalities and stated that the Board there was considering the process as well as the specific project. He also felt however that board members could differ in their opinions on this issue and in that sense deal simply with the process or procedure and not the underlying substance of a particular project.

Councilor Marzola asked if this was a process discussion versus a project discussion. Attorney Primo stated that this in his opinion would be a discussion of both. The Boards are considering does the Town follow their own procedure or does the Village follow their own procedures. Their decision in this regard might very well rest on the type of project we are talking about and the potential magnitude or impact of same. Conversation ensued regarding whether this meeting would be a process discussion over a project discussion.

Councilor Loeffler stated that the discussion (of the balancing test factors) are process oriented but the nature of the project weights the discussion.

Councilor Marzola stated that he believes the context of the discussion of this meeting is more about a process discussion as the Village of Manlius has already done all of the research regarding the Fire Department and the needs of their Fire Department.

Attorney Primo stated that the discussion is over procedure however in light of what is proposed there felt that whether and to the extent this meeting would be a process discussion over a project discussion was within each boards discretion. Yes we are concerned over the review and approval process or procedures to be followed but it would seem that the boards decision in this regard could also very well be based on the type of project we are talking about.

Member Schepp asked what the parcel being discussed is zoned? Attorney Primo stated that the parcel is zoned RM (Residential Multi-use). Conversation ensued regarding the zoning of the parcels.

Member Schepp questioned whether a part of the parcel may be zoned restricted agricultural and further stated that, in considering the balancing test factors, it is important to know the zoning of the entire parcels.

Councilor Loeffler discussed the RM zoning in the Town of Manlius. Councilor Loeffler stated that the determination of the zoning does not have a lot of influence over dictating what process is used (to determine lead agency and municipal sovereignty).

Attorney Primo discussed the zoning in the area of the land being considered and the allowed uses in those zoning regulations. Member Schepp stated that it is important to know what the zoning classification for those parcels as outlined in balancing test factors 3 and 4. Discussion ensued regarding the zoning classification of the property.(NOTE- following the meeting it was confirmed the parcels proposed for the project are all zoned RM)

Supervisor Theobald opened the floor to comments from the public and reviewed the rules of decorum.

Matt Kerwin, Hiscock and Barclay representing the Village of Manlius, stated that the Village of Manlius is committed to this project and see this project as being crucial to providing emergency services to the Town of Manlius. The Village is committed to working cooperatively with the Town Board, the Zoning Board of Appeals and the Planning Board in addressing any concerns that they may have about the project. There have been several periodic discussions over the years regarding this project and it would be a disservice to the Town residents if we threw this project away and took sides. It is important that we find a solution to this problem and a solution can be found.

Attorney Primo asked if the Zoning Board of Appeals was prepared to make a decision at this meeting. Chairman McIntosh stated that the Zoning Board of Appeals would like more time to consider the resolution and this will be further discussed at the next (regular) Thursday ZBA meeting.

Judy Dardinski, Manlius, stated that she is shocked that there is even any question as to whether or not this land should be used to build a fire station. She cannot understand the animosity or the discussion of hypotheticals. The Village has a fire station that needs to be built. We need our homes to be protected; we have worked on this for many years and spent a lot of money on studies. What is the Town going to do with the land as it is has been sitting there for a long time? The Town is not even certain of the current zoning of the property.

Attorney Primo stated that the Boards have no negative sentiments towards the (fire station) project. The Board is considering only jurisdiction over review of the project.

Mrs. Dardinski stated that she is concerned about the Town of Manlius Zoning Board and Town of Manlius Town Board not even knowing the fundamentals of the zoning on the property.

Councilor Loeffler stated that the Boards are considering what the best way for all the citizens within the Township and the Village to have the process to make that determination and we are completely open to which way that (process) should go.

Mrs. Dardinski asked for clarification as to how the guidelines are being used to determine what process is being used.

Councilor Loeffler stated that the Attorney for the Town has presented the information as a way to look at two different approaches to the process of doing SEQRA and environmental review of the property. The attorney is using this information to help guide the Boards as to what approach will be the best approach for the citizens of the Township. Mrs. Dardinski asked if the Boards are now trying to understand the legal "what-ifs" to make sure that this process is done in a legal manner?

Attorney Primo stated that there is a concern that the Town's normal procedures for zoning and planning review requirements should be followed as the project is developed on a property located in the Town. The concern is on how the process of SEQRA and project review should be conducted.

Mrs. Dardinski asked if the Town was concerned that if this process is not completed right that this (fire station project) could be used as an example for something further down the road?

Attorney Primo stated that there are always concerns about precedent. The concern is that this corridor (Rte. 92) is a historically sensitive corridor and the Board has an obligation to Town residents to, attempt to within the law, have oversight on projects in the Town that the Town would normally have zoning and planning jurisdiction over.

Chairman McIntosh stated that there has been nothing said about being for or against the fire station, this has to do with the jurisdiction of the law.

Mrs. Dardinski stated that she was hearing a lot of hypothetical questions and examples when the Town was not certain about the zoning classification.

Councilor Marzola stated that there is some concern that the Town has some involvement in the SEQRA process to ensure that the planning and environmental issues are discussed and there is due diligence performed. Councilor Marzola stated that what the Attorney has presented, with the Monroe County example, are the considerations that have been used in other court cases to prepare a resolution related to the sovereignty concept.

Councilor Green asked for clarification, if there were adverse environmental impacts from this project, how would that responsibility determined (as between the town and village)?

Attorney Primo stated that should be no difference here. The relationship should be the same as between a private developer and a municipality with zoning and planning oversight authority.

Attorney Primo stated that the Boards should consider all of the comments and information and make a determination in the next few weeks.

Supervisor Theobald stated that the Village of Manlius has done their due diligence with the studies performed. Supervisor Theobald stated that he is hearing concerns from Town residents in the area. The Town residents feel that because this project is on Town property, the Town should be lead agency and go through the Town's zoning process. With all of that in mind, the Town wants this project to be successful if through the proper review processes it is warranted and, as well the Town does not want to put unfair barriers up (for the progress of this project). There are certain requirements environmentally that must be met, traffic studies that must be completed. This type of thing. This (process) is due diligence by the Town Board for the residents in that area (Enders Rd and Rte. 92). While the Town wants to do everything it can to make this project work if it undergoes the proper reviews and the Town must do this correctly. The Villages and the Towns have separate zoning requirements and because this project is located on Town property there should be more focus on the Town's zoning requirements. This should be done within reason because this is a fire station that is there to protect the residents.

Member Kelley asked if the Village of Manlius gave reasons as to why the Town was eliminated from the process.

Attorney Primo stated that the Village's resolution of municipal sovereignty spells out their rationale. It had to do with time issues, concern about losing the ability to purchase the property and concern about how lengthy SEQRA review can be. There had to be a referendum for the Village to get bond approval and SEQRA has to be completed first.

Member Kelley asked how much time the Village was saving by eliminating the Town from the process (SEQRA)? The SEQRA process would be the same, whether the Village completes the process or the Town completes the process.

Attorney Primo stated that there is concern (by the Village) that the Town might take longer with the procedure. The town might look for more studies. The Town might request an environmental impact statement as opposed to, for instance, issuing a conditioned negative declaration.

Councilor Loeffler stated that he does not want to infer as to what the Village was concerned with. The SEQRA process is a process that is laid out. The SEQRA process can differ on each Board even though the guideposts are the same. The process can differ significantly based on the concerns raised by a Board. Councilor Loeffler stated that he would rather not phrase it by saying that one Board would be faster than another Board. It should be phrased; is it possible that SEQRA process could come out to different conclusions. There may be different conditions and different requirements on the property. It is not to say that it (the outcome) will be good or bad in either case, but rather that there could be different results.

Member Kelley asked why there is conflict between the Village and the Town when we work so closely together. Member Kelley asked why there is a conflict when we get to this project (the fire station) that is needed?

Jerry Dardinski, Manlius, asked if the communications that have gone back and forth between the Town, Village and State will be made available to the public. Attorney Primo stated that those documents are available from either municipality.

Mr. Dardinski stated that there is a lot of flak going around and regarding this project and he would like to see the communications that have occurred. He believes that everyone would like to see the project move ahead but it is a question of how the process moves forward. Mr. Dardinski stated that if the Village loses the option to purchase the property then the Village is out of business. The longer the process takes the higher the probability is that the Village will lose the right to purchase the property. Mr. Dardinski discussed the rumors surrounding the conflict regarding the fire station project.

Member Green stated that she is grateful for the opportunity to sit with both Boards and discuss the matter as there has been a lot of discussion regarding this (fire station project). Everyone wants to do what is best and unfortunately the process takes too much time. It is wonderful to get together with the Boards and hear everyone's opinion. Member Green asked Mayor Whorall about the status of the purchase of the land.

Attorney Kerwin stated that the deal is not dead and the project is still moving forward.

Supervisor Theobald stated that there are a lot of rumors and perceptions of why things are being done in a certain way. The Town has the resident's best interests at heart.

Chairman McIntosh asked why the communication that had been ongoing between the Village and the Town had all of a sudden stopped?

Attorney Primo stated that when the village adopted the resolutions (Municipal Sovereignty and Lead Agency) there was a thirty day time period within which the Town had to respond.

Chairman Macintosh asked why the Village adopted those resolutions when there had been conversation taking place (between the Town and the Village)?

Attorney Primo stated that Attorney Jeff Brown had been working on an inter-municipal agreement and had been proposing that the Village and the Town share joint lead agency for SEQRA purposes. The resolutions were adopted at the next meeting. The Mayor and the Village Clerk met with the Town and explained why they adopted the resolutions (Municipal Sovereignty and Lead Agency). No resolution had been reached as yet and the Town ran up against the thirty day time period and couldn't not act.
Elaine Tummino, Manlius, stated that the residents elect the Town Supervisor to be the "father" and watch over the Town. Mrs. Tummino stated that the Village would not like something coming into the Village that they did not have a say over. The Supervisor has to protect the Town and the Town has a right to say what is going on in the Town.

Martha Dygert, Village of Manlius Clerk, stated that she wanted to clarify a point made by Attorney Primo. Village Clerk Dygert stated that the Village came to the Town, in January, when the village realized that the people providing professional services on this project had not guided the Village correctly. She does not feel as though it is the Village Board against the Town Board. When the Village met with the Town in January, the Village intended that the Town would be lead agency on this project and understood that the SEQRA process would take place. At that time the Town Attorney recommended that the Village and the Town enter into an inter-municipal agreement prior to starting and of the process. From January to June was six months and there was no inter-municipal agreement. When the Village met with the Town on July 1 and explained that they had passed the resolutions (Municipal Sovereignty and Lead Agency), the Village explained that they were not going to rush the process. The Village stated at that time, they would defer jurisdiction over the project to the Town. The Village just wanted a vote (referendum) to know yes or no regarding the project.

Attorney Primo stated that the resolutions the Village adopted didn't say anything to this effect (regarding the Towns role).

Councilor Loeffler reviewed the nine balancing test factors. Councilor Loeffler stated that there are good intentions on all sides and the Boards will continue to work together. The Board may not always agree with other boards or every constituent but each board was elected to give each matter due consideration. That is true for every Town and Village representation. It is not whether the project will or will not be approved; it has to do with what each Board was elected to do.

Supervisor Theobald stated that this matter will be discussed at the next Town Board and Zoning Board of Appeals meetings, Supervisor Theobald thanked all for attending.

Councilor Marnell made a motion, seconded by Councilor Loeffler, to adjourn the special joint meeting of the Town Board and the Zoning Board of Appeals at 8:12pm.

Ayes: Supervisor Theobald, Councilor Loeffler, Councilor Cassalia, Councilor Marzola, Councilor Marnell, Councilor Giordano, Councilor Green

Nayes: 0 All in Favor. Motion Carries.

Chairman McIntosh made a motion, seconded by Member Ruthig, to adjourn the special joint meeting of the Town Board and the Zoning Board of Appeals at 8:12pm.

Ayes: Chairman McIntosh, Member Schepp, Member Ruthig, Member Kelley, Member Campbell

Nayes: 0 All in Favor. Motion Carries.

Respectfully Submitted,

Allison A. Edsall
Manlius Town Clerk

Deborah Demmon
ZBA Secretary