

**TOWN OF PENDLETON  
REGULAR MEETING  
March 13, 2017**

A regular meeting of the Town Board of the Town of Pendleton was held at the Town Hall, 6570 Campbell Blvd. Pendleton, N.Y. on the 13<sup>th</sup> day February 2017 at 7:00 P.M. There were 3 Public Hearings scheduled.

**PUBLIC HEARING #1**

The first Public Hearing was scheduled for 6:45 P.M. The Public Hearing Notice was published in the Lockport Union Sun and Journal on March 6, 2017. The purpose of the hearing was to receive public input on a proposed permit fee for the installation of Roof Mounted Solar Panels, Ground Mounted Solar Panels and Solar Arrays/Farms Installations.

Supervisor Maerten opened the Public Hearing at 6:50 P.M.

One resident asked why there wasn't a fee for a permit for the installation of windmills. Building Inspector Tim Masters will look into it.

No one else wished to be heard.

Supervisor Maerten closed the Public Hearing at 6:51 P.M.

**PUBLIC HEARING #2**

The second Public Hearing was scheduled for 6:50 P.M. The Public Hearing Notice was published in the Lockport Union Sun and Journal on March 6, 2017. The purpose of the hearing was to receive public input regarding a proposed Local Law providing a one year appointment for Alternate members to the Planning Board and Board of Appeals.

Supervisor Maerten opened the Public Hearing at 6:51 P.M.

Several residents had a few questions/concerns. Some of their concerns were as follows:

- How many members to be added – one alternate member per Board
- Will there be an additional cost – only if the alternate member were required to vote because a quorum was not met for the following reasons; because of conflict of interest, illness, vacation or failure to attend a scheduled meeting for any reason

Supervisor Maerten closed the Public Hearing at 6:57 P.M.

**PUBLIC HEARING #3**

The third Public Hearing was scheduled for 6:55 P.M. The Public Hearing Notice was published in the Lockport Union Sun and Journal on March 6, 2017. The purpose of the hearing was to receive public input regarding a proposed Local Law to establish the position of Town Constable for the Town of Pendleton.

Supervisor Maerten opened the Public Hearing at 6:57 P.M.

Supervisor Maerten reported that the reason for the new position is that currently the Court Security Officers have been working under the umbrella of the Niagara County Sheriff's Office. The Security Officers can no longer work under the County's jurisdiction. They will now be registered under the state's Department of Justice.

Several residents had a few questions/concerns. Some of their concerns were as follows:

- Are the security Officer's just dedicated for the Court's – yes, there will not be any patrols
- Are they authorized to have a firearm – no, not required but if they carry a firearm it will be under their own license
- Asked about the "additional" powers listed in the Local Law – it is not the intent to use the additional powers at this time

- One suggestion was to hire private security – cost would be greater

Supervisor Maerten closed the Public Hearing at 7:12 P.M.

### REGULAR MEETING

Supervisor Maerten called the meeting to order at 7:12 P.M.

Supervisor Maerten read the invocation and led the salute to the flag.

Supervisor Maerten asked for a moment of silence for past Town Justice Lee Klein.

ROLL CALL:	Supervisor Maerten	present
	Councilman Leible	present
	Councilman Ostrowski	present
	Councilman Fischer	present
	Councilwoman Jarvis	present

Also present were:

Terry Pienta	Town Clerk
Kelli Coughlin	Assessor
Claude Joerg	Town Attorney
Jim Argo	Water-Sewer Superintendent
Tim Masters	Building Inspector
David Naus	Planning Board
Mark Walter	Fire Chief
Don Bergman	Budget Officer

There were approximately 13 residents in attendance.

### AMENDMENTS, ADDITIONS, DELETIONS

### COMMENTS ON AGENDA ITEMS

A resident asked about the item on the agenda for the request for funding. Supervisor Maerten said that it was an annual request from the Business Development Committee for a matching grant through the County.

### ROUTINE BUSINESS

RESOLUTION 65 - 17

#### APPROVAL OF MINUTES

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                     Nays 0

Resolved that the minutes of the Regular Meeting held on February 13<sup>th</sup> and Work Session on February 27<sup>th</sup> be approved as submitted by the Town Clerk.

**Supervisor Maerten** reported the total expenditures that were authorized and paid in the month of January:

General Fund	\$	41,410.54
Highway	\$	51,979.47
Water	\$	16,044.77
Sewer	\$	4,693.94
Refuse	\$	35,554.31

Supervisor Maerten reported that the tax collected for the month of January 2017 was \$127,696.10 which is a decrease of \$4,009.28 from January 2016. He also reported that the Board has received the annual update, the Executive Summary for the LOSAP program.

## OTHER REPORTS

**Councilman Leible** thanked Ken Smith for his years of working for the Town of Pendleton and hopes he has a great retirement. He also thanked Engineer Dave Britton and Chief Walters in assisting with a conference call with the DEC about the Town's property located across from the Town Hall for use of the property for the Town's annual July 4<sup>th</sup> celebration. He reported that the Summer Recreation program registration will be held at the Town Hall on Saturday May 6<sup>th</sup> and the 20<sup>th</sup> (9:00 am to 12:00 pm) and Thursday evening on May 18<sup>th</sup> (7:00 pm to 9:00 pm). The program will run from Monday July 10<sup>th</sup> to Friday August 18<sup>th</sup>. He announced that the Town will be looking for a Recreation Leader for the program. The candidate must have a Teaching Certification.

**Councilman Fischer** reported that the Sewer Department had 2 Regular time sewer calls, 3 over time calls, 2 pressure sewer break repairs, inspection and maintenance on 3 large lift stations and 15 Duplex Tanks, 5 sold home compliance inspections for sewer/water, completed 24 underground utility stakeout requests, one full load of electronics picked up for recycling, setup tables and chairs for seniors and collected garbage from Town Hall when needed. He reported that the Water Department had 2 New Home water tapes completed, installed one 1 inch water meter pit installed on Fisk Rd., 1 water main valve emergency repaired on Transit Rd., 1 fire hydrant repaired on Transit Rd., 5 final water meter reads, 2 new home water meters installed, 3 sewer and water open trench inspections for new homes, quarterly stage 2 water sampling complete and delivered to Niagara Falls water board for testing and locating and marking all water services on Robinson Rd for Niagara County new water main installation. He also commented that the Highway Department cleaned up the ditches and cleaned up the shoulders on Fisk Rd. H also thanked everyone for the hard work during the power outage pumping out pits to keep them running. He also commented on the Utility Company and their prompt response. Supervisor Maerten also commented that he was receiving updates from the power company all day reporting on the progress throughout the County.

**Councilwoman Jarvis** reported that Wendelville Fire Company will be having their gun raffle on Saturday April 1<sup>st</sup> from 4 to 8 PM. On the 8<sup>th</sup> of April they will be hosting a Vendor Fair from 9 AM to 3 PM. The annual Easter Egg Hunt will be held on the Saturday before Easter April 15<sup>th</sup>.

**Councilman Ostrowski** wished Dave Gerber, the Building Inspector the best on his retirement. He worked for the Town for 18 years. He also wished Doreen Genet from the Town Clerk's Office the best for her upcoming retirement on April 15<sup>th</sup>. He also reported that he completed an audit for Judge Mack in February and found all the records to be in order. He reported that he has met with Phil Samuel's from Your Image Graphics and determined the placement of 4 new cameras and 21 door locks using a key fob system. He continues to work with Fire Chief Walters to try to have at least 2 defibulators installed at the Town Hall.

**Engineer Britton** asked the Board to accept the road for Phase III and Phase IV for the Meadows subdivision. There was a delay for the installation of the utilities because of an increase in construction costs. The documents are now complete and have been reviewed by Attorney Claude Joerg. He asked the Board to consider the road dedication with the stipulation that no homes are to be built until all the utilities have been installed and the right of way restored to the satisfaction of the Highway Superintendent.

### RESOLUTION 66 - 17

#### **ACCEPT DEDICATION OF PHASE III AND IV ROADWAY NAMED DUBLIN LANE AND CHRISTIANA COURT**

Motion by Councilman Leible, seconded by Councilwoman Jarvis, the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                     Nays 0

Whereas the Campbell Pendleton LLC, is the developer for the Meadows at Pendleton Phase 3 and Phase 4 and have submitted a request to the Town Board to accept roadways, easements, water mains and storm sewers known as Dublin Lane and Christiana Court, and

Whereas the Town Attorney has reviewed all the submitted dedication documents and were deemed in proper order, and  
Whereas, a stipulation that has been agreed upon by all parties was not to begin building or to issue permits to build any homes until all utilities have been installed and the right of way have been restored to the Highway Superintendents satisfaction,  
Now therefore be it resolved, that the Town Board hereby authorizes the execution on behalf of the Town.

Engineer Britton updated everyone that the Town is waiting to receive a final letter of determination from FEMA regarding the updated and approved flood plain maps that will begin the process for a six month time period. During the six months he will work with the Town to mail letters to the residents that the new maps will impact. Public informational meetings will also be held. He also reported on the conference call with the DEC, Councilman Leible and Chief Walters. He said that the DEC is trying to accommodate the Town regarding the land that the Town owns across the road from the Town Hall. They discussed the issues that the Fire Department had last year with the 4<sup>th</sup> of July fireworks. The Town can mow the grasses but they cannot bring any construction materials such as stone or wood chips to the site because of the "wetland" status of a majority of the parcel.

**Attorney Claude Joerg** updated everyone regarding National Fuel and the Compressor station to be located on Killian Road. The Town hired an Attorney that was a specialist in the field through the RFP process. The Town Board selected Gary Abraham. The Planning Board determined to approve the project subject to obtaining FERC approval. National Fuel was also required to get a clean air permit and a clean water permit from the state. Upon receipt of the FERC approval NFG has moved ahead for their project. They have been offering land owners money for the installation of lines that will be installed on the owner's property. National Fuel came to the Building Department for a permit to begin their project. The Building Department denied the permit on the grounds that this project would not be providing an essential service to any Pendleton residents as defined in the Town's Zoning Code. If a building permit is denied you are entitled to take your case to the Board of Appeals. National Fuel chose not to do follow that procedure and decided to sue the Town of Pendleton. Gary Abraham has prepared an answer and filed his response. It is anticipated that the proceeding and hearing will be in early April to determine if National Fuel can proceed with their project to construct the compressor. Also in question is if FERC act properly in granting the permit? The State Attorney General is also filing a complaint that National Fuel hasn't complied with the requirements of the DEC. The Attorney for National Fuel has filed a FOIL request for all the invoices that the Town has paid to Gary Abraham and any 3<sup>rd</sup> parties involved in this process. This is public information and may end up being published in the newspaper. He reminded everyone that the money spent is to protect the Town and its citizens.

## DEPARTMENT HEADS

**Water-Sewer Superintendent Jim Argo** reported that First Niagara always provided a generator for the pump station that is located on their property. Having a generator on the premises saved the Town's employees from continually going to the pit to pump out the water during a power outage. Now that Key Bank owns the building they did not want to have anything to do with it going forward so he spoke with the Grant writer to submit an application for the purchase of three portable generators instead of the one permanent generator that the Town was going to apply for. He has requested prices from various businesses and will keep the Board informed.

**Building Inspector Tim Masters** reported that there were 5 violations for the month of February. Two have complied and there are 3 that are still active. He also reported that as of March 1 there are 38 active projects in Town. 14 are new single family homes. He also reported that Ryan's Homes said that they have 14 more homes in the process waiting for the utilities to be completed and will be bringing those permit requests into the Building Department at approximately 2 per week. He also reported that a stop order is in place for a home being built on Aiken Road. A neighbor has concerns about the height of the building. They are working with the builder at this time to try to satisfy the concerns of the neighbor.

**Assessor Kelli Coughlin** reported that taxable status date was March 1<sup>st</sup> and her office is working on inputting all the information into the computer. There were 29 complete new builds in the past year she has to place a value on; there were 23 homes that were not completed on last year's taxable status date that she will now place a full value on. The 14 homes currently in the process of being built will receive a partial value on those homes. She is also building the lots for the last phase of the Meadows into the computer, subdividing the lots from the parent parcel, and placing a value on the individual lots. Change of assessment notices for the homes will be mailed out in April.

## NEW BUSINESS

### RESOLUTION 67 - 17

#### **ESTABLISH PERMIT FEE FOR ROOF MOUNTED SOLAR PANELS, GROUND MOUNTED SOLAR PANELS AND SOLAR ARRAYS/FARMS INSTALLATIONS**

Motion by Councilman Leible, seconded by Councilman Ostrowski the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                    Nays 0

Resolved to establish a permit fee of \$100.00 for the installation of any Roof Mounted Solar Panels, Ground Mounted Solar Panels and Solar Arrays/Farms Installations effective immediately.

Supervisor Maerten explained that the reason for establishing the Local Law for Alternate Members for the Planning Board and Board of Appeals was because in the past it has been difficult to find people interested in filling the positions because of the long term commitment and not knowing anything about the actual position. Recently there has been some interest and rather than turn away talented people the Board felt this would help potential candidates in the future.

### RESOLUTION 68 - 17

#### **LOCAL LAW TO ESTABLISH ALTERNATE MEMBERS FOR THE PLANNING BOARD AND BOARD OF APPEALS**

Motion by Councilman Leible, seconded by Councilman Fischer the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                    Nays 0

Resolved to adopt a local law providing for the appointment of Alternate Members of the Planning Board and Alternate Members of the Zoning Board of Appeals  
Be it enacted by the Town Board of the Town of Pendleton as follows:

##### **Section 1: Short Title and Applicability**

This local law shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board and on the Zoning Board of Appeals in the Town of Pendleton.

##### **Section 2: Declaration of Policy**

It is hereby determined that it is in the best interest of the Town of Pendleton that an alternate member position be established for the Town of Pendleton Planning Board and the Town of Pendleton Zoning Board of Appeals, because of the necessity for acting expeditiously on matters pending before the board; to enhance the ability to establish a quorum; to enable a full seven member board participation in decisions whenever possible; to attract quality board members, without preventing public service because of travel commitments, vacations, sickness and possible conflicts; and to provide for greater flexibility in the scheduling of meetings.

##### **Section 3: Definitions**

"Planning Board" means the planning board of the Town of Pendleton as established by the Town Board of the Town of Pendleton by local law or ordinance, pursuant to the provisions of § 271 of the Town Law and §239-c of the General Municipal Law.

"Zoning Board of Appeals" means the zoning board of appeals of the Town of Pendleton as established by the Town Board of the Town of Pendleton by local law or ordinance, pursuant to the provisions of § 267 of the Town Law and §239-c of the General Municipal Law.

"Member" means an individual appointed by the Town Board to serve on the Town of Pendleton Planning Board or the Town of Pendleton Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such planning board.

"Alternate Member" means an individual appointed by the Town Board to serve on the Town of Pendleton Planning Board or the Town of Pendleton Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the board, as provided herein.

**Section 4: Authorization/Effect**

The Town of Pendleton hereby enacts this local law to provide a process for appointing alternate members of the Town of Pendleton Planning Board and the Town of Pendleton Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the board.

**Section 5; Events:**

The alternate member shall substitute for any member of the Board in the event such member does not attend or participate because of:

- A conflict of interest.
- Personal illness.
- Family illness.
- Vacation.
- Family and professional obligations.
- Failure to attend a scheduled meeting for any reason.

**Section 6: Planning Board**

Alternate Members of the Planning Board shall be appointed by the Town Board for a term of one (1) year. Alternate Members shall be appointed at the first Town Board meeting of January and terminate on the December 31th of same year.

The Alternate Member of the Planning Board shall be entitled to attend all meetings of the Planning Board to sit with the board provided, however, that the alternate shall only participate by substituting for a member where a regular member of the Planning does not participate for one of the reasons set forth in Section 5 above. The alternate member shall receive the same compensation as regular members of the board for every meeting attended whether or not the alternate member actually participates.

The chairperson of the Planning Board may designate an Alternate Member to substitute for a member when such member is absent or unable to participate on an application or matter before the Planning Board. When so designated, the Alternate Member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

All provisions of state law relating to planning board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to Alternate Members.

**Section 7: Zoning Board of Appeals**

Alternate Members of the Zoning Board of Appeals shall be appointed by the Town Board for a term of one (1) year. Alternate Members shall be appointed at the first Town Board meeting of January and terminate on the December 31th of same year.

The Alternate Member of the Zoning Board of Appeals shall be entitled to attend all meetings of the Zoning Board of Appeals to sit with the board provided, however, that the alternate shall only participate by substituting for a member where a regular member of the Appeals does not participate for one of the reasons set forth in Section 5 above. The alternate member shall receive the same compensation as regular members of the board for every meeting attended whether or not the alternate member actually participates.

The chairperson of the Zoning Board of Appeals may designate an Alternate Member to substitute for a member when such member is absent or unable to participate on an application or matter before the Zoning Board of Appeals. When so designated, the Alternate Member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.

All provisions of state law relating to zoning board of appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to Alternate Members.

**Section 8: Supersession of Town Law**

This local law is enacted pursuant to the authority set forth in the Municipal Home Rule Law Sections 10(1)(ii)(a)11) and 10(1)(ii)(d)(3) and Town Law Section 271(15). To the extent that any provision of this law is inconsistent with any other Town Law including Section 271(15), such law is expressly superseded by the provisions of this law. It is the intent of this law to increase and set forth additional reasons for participation by an alternative board member in decisions than are set forth in Town Law Section 271(15).

**Section 9: Severability**

If any provisions of this local law are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction. The remaining provisions of the local law shall remain in effect.

**Section 10: Effective Date**

This local law shall take effect upon filing with the Secretary of State.

Supervisor Maerten explained that the reason for creating the position of Town Constable is that the Town is no longer able to provide the security for the Courts through the Sheriff's Department as they have done in the past.

**RESOLUTION 69 - 17**

**LOCAL LAW TO ESTABLISH THE POSITION OF CONSTABLE FOR THE TOWN OF PENDLETON**

Motion by Councilman Fischer, seconded by Councilman Ostrowski, the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                     Nays 0

Resolved to adopt a local law to establish the position of Town Constable.

**Section A.** Title: A local law establishing the position of Town Constable for the Town of Pendleton a Town of the second class that has no police department.

**Section 2.** Purpose:

It is the purpose of this Law to promote the public health, safety, and welfare in the Town of Pendleton, by establishing the position of Town of Pendleton, Town Constable pursuant to §20, Subdivision 1, (b) of the Town Law of the State of New York, which provides in pertinent part as follows:

Except as otherwise provided by law, every town of the second class shall have . . . if there be no town police department, as many constables as the town board may determine necessary. . . .

The Criminal Procedure Law of the State of New York at §2.10 subdivision 1 provides that constables of the Town of Pendleton shall have the powers of and shall be peace officers. Such Town Constables shall perform such duties as the directed by the Supervisor, Town Board and or Town Justices for the Justice Court of the Town of Pendleton pursuant to the laws of the State of New York.

**Section 3.** Peace Officer Statute:

NYS Criminal Procedure Law (CPL). Section 2.10 Subdivision (1) sets forth those persons who are peace officers, specifically including a constable of a town. Provided such designation is not inconsistent with local law. The office of Town Constable is expressly authorized by Section 20 (1) (b) of the Town Law.

**Section 4** Training:

As peace officers, constables In the Town of Pendleton must be trained In accordance with Section §2.30 of the CPL and any other requirements set forth by the Town Board and/or by the New York State Division of Criminal Justice Services (DCJS) and the Municipal Police Training Council (MPTC).

N.Y. Crim. Proc. Law § 2.30 Training requirements for peace officers, contains the following training requirements:

1. Every peace officer in the state of New York must successfully complete a training program, a portion of which shall be prescribed by the municipal police training council and a portion of which shall be prescribed by his or her employer. The portion prescribed by the municipal police training council shall be comprised of subjects, and the hours each is to be taught, that shall be required of all types or classes of peace officers. The hours of instruction required by the municipal police training council shall not exceed one hundred eighty, unless a greater amount is either required by law or regulation, or is requested by the employer.

The segment prescribed by the employer for its employees shall be comprised of subjects, and the hours each is to be taught, relating to the special nature of the duties of the peace

officers employed by it provided, however, that when the subjects prescribed by the employer are identical to the subjects in the training program required by the municipal police training council, the employer shall not be required to provide duplicate training for those subjects.

2. Each state or local agency, unit of local government, state or local commission, or public authority, or public or private organization which employs peace officers shall provide the training mandated by this section, the cost of which will be borne by the employer. Each peace officer satisfactorily completing the course prescribed by the municipal police training council shall be awarded a certificate by the division of criminal justice services attesting to that effect, and no person appointed as a peace officer shall exercise the powers of a peace officer, unless he or she has received such certification within twelve months of appointment.

3. No employer shall allow any peace officer it employs to carry or use a weapon during any phase of the officer's official duties, which constitutes on-duty employment, unless the officer has satisfactorily completed a course of training approved by the municipal police training council in the use of deadly physical force and firearms and other weapons, and annually receives instruction in deadly physical force and the use of firearms and other weapons as approved by the municipal police training council.

4. Upon the failure or refusal to comply with the requirements of this section, the commissioner of the division of criminal justice services shall apply to the Supreme Court for an order directed to the person responsible requiring compliance. Upon such application, the court may issue such order as may be just, and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

5. Every employer of peace officers shall report to the division of criminal justice services, in such form and at such time as the division may by regulation require, the names of all peace officers who have satisfactorily completed any of the training requirements prescribed by this section.

6. A certificate attesting to satisfactory completion of the training requirements imposed under this section awarded to any peace officer by the executive director of the municipal police training council pursuant to this section shall remain valid:

(a) during the holder's continuous service as a peace officer; and

(b) for two years after the date of the commencement of an interruption in such service where the holder had, immediately prior to such interruption, served as a peace officer for less than two consecutive years; or

(c) for four years after the date of the commencement of an interruption in such service where the holder had, immediately prior to such interruption, served as a peace officer for two consecutive years or longer.

As used in this subdivision, the term "interruption" shall mean a period of separation from employment as a peace officer by reason of such officer's leave of absence, resignation or removal, other than removal for cause.

**Section 5. Powers and Duties:**

New York Town Law § 39. Powers and duties of constables and town policemen, provides: Constables . . . shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law.

N.Y. Crim. Proc. Law § 2.20 provides that [t]he persons designated in section 2.10 of this article shall have the following powers:

(a) The power to make warrantless arrests pursuant to section 140.25 of this chapter.

(b) The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to section 35.30 of the penal law.

(c) The power to carry out warrantless searches whenever such searches are constitutionally permissible and acting pursuant to their special duties.

(d) The power to issue appearance tickets pursuant to subdivision three of section 150.20 of this chapter, when acting pursuant to their special duties.

(e) The power to issue uniform appearance tickets pursuant to article twenty-seven of the parks, recreation and historic preservation law and to issue simplified traffic informations pursuant to section 100.25 of this chapter and section two hundred seven of the vehicle and traffic law whenever acting pursuant to their special duties.

(f) The power to issue a uniform navigation summons and/or complaint pursuant to section nineteen of the navigation law whenever acting pursuant to their special duties.



(g) The power to issue uniform appearance tickets pursuant to article seventy-one of the environmental conservation law, whenever acting pursuant to their special duties.

(h) The power to possess and take custody of firearms not owned by the peace officer, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer.

(i) Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

(j) Uniformed court officers shall have the power to issue traffic summonses and complaints for parking, standing, or stopping violations pursuant to the vehicle and traffic law whenever acting pursuant to their special duties.

2. For the purposes of this section a peace officer acts pursuant to his special duties when he performs the duties of his office, pursuant to the specialized nature of his particular employment, whereby he is required or authorized to enforce any general, special or local law or charter, rule, regulation, judgment or order.

3. A peace officer, whether or not acting pursuant to his special duties, who lawfully exercises any of the powers conferred upon him pursuant to this section, shall be deemed to be acting within the scope of his public employment for purposes of defense and indemnification rights and benefits that he may be otherwise entitled to under the provisions of section fifty-k of the general municipal law, section seventeen or eighteen of the public officers law, or any other applicable section of law.

The Town Board does hereby confer the following additional powers upon the Town Constables:

Attending proceedings of the Justice Court so as to maintain order, assist the Justices and those who have business before the court.

Attending meetings at the Town Hall as necessary to maintain order and to remove disorderly persons from such meetings.

Serve and or execute legal papers on behalf of the Town Board and or the Justice Court.

Providing security for the Tax Collector and other town officials as requested.

Guard the election polls.

Escorting prisoners to jail and to court, and having thorn processed.

Controlling crowds at any public function within the Ton of Pendleton.

**Section 6. Defense and Indemnification:**

A constable, whether or not acting pursuant to his special duties, who lawfully exercises any of the powers conferred upon him or her, pursuant to section §2.30 of the CPL shall be deemed to be acting within the scope of his or her public employment for purposes of defense and indemnification rights and benefits that he or she may be otherwise entitled to under provisions of Section §50-K of the General Municipal Law, Section §17 or §18 of the Public Officers Law, or any other applicable section of law.

**Section 7. Residency:**

Pursuant to Municipal Home Rule Law § 10(l)(ii) (a)(1), local governments have the authority to enact local laws regarding qualifications of local officers. It is the purpose of this section to modify the requirements of § 23 of the Town Law and § 3 of the Public Officers Law, which sections require that the Constable be a resident and elector within the Town. This section shall supersede Town Law § 23(1) in its application to the offices of Constable for the Town of Pendleton, The person holding the office of Constable in the Town of Pendleton need not be a resident nor an elector of the Town of Pendleton; provided, however, that such person shall reside in Niagara County or an adjoining county within the State of New York.

**Section 8: Discharge and/or discipline**

The Town Constable of the Town of Pendleton shall serve at the pleasure of the Town Board of the Town of Pendleton and may be discharged without cause.

In addition, the Town Board of the Town of Pendleton can impose any reasonable discipline to an appointed Town Constable following the notification of the cause for such discipline and a reasonable opportunity to be heard before the Town Board of the Town of Pendleton.

**Section 9. Possession of Firearms:**

Despite the provisions of N.Y. Crim. Proc. Law § 2.20 (h) which provides peace officers the power to possess and take custody of firearms, nothing contained within this local law shall be deemed to authorize such constables to carry, possess, repair or dispose of a firearm

unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

**Section 10. Severability:**

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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

Supervisor Maerten reported that the Pendleton Community & Business Association requested that the Town Board approve the submission and matching funds for a grant through the 2017 William G Mayne Jr. Business/Community Enhancement Program. The money will be used to create oversized historic photographs of the Pendleton Center train station and its trolley cars. These photo graphs will then be fastened to the old Town Garage located next to Brauer's Restaurant.

RESOLUTION 70 - 17

**REQUEST FOR MATCHING FUND GRANT**

Motion by Councilman Leible, seconded by Councilman Fischer the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                         Nays 0

Resolved to authorize the submission of an application for a matching fund grant through the 2017 William G Mayne Jr. Business/Community Enhancement Program and to pledge \$1,500 toward the cost of a historical Pendleton Center Mural to be fastened to the side of the Pendleton Center Food Storage Depot, now known as the old Town Garage located next to (north side) Brauer's Restaurant.

The 2017 Agreement with Pyrotechnico is the same price as the past two years and will contain additional displays that were not able to fire off last year because of the dry conditions of the site and the fires that were started.

RESOLUTION 71 - 17

**AUTHORIZATION TO SIGN AGREEMENT WITH PYROTECHNICO**

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED      Ayes 5      Maerten, Leible, Ostrowski, Fischer, Jarvis  
                         Nays 0

Resolved to authorize the Supervisor to sign the agreement with Pyrotechnico for \$9,660.00 for the 2017 July 4<sup>th</sup> Celebration.

RESOLUTION 72 - 17

**DEPUTY TOWN CLERK**

Motion by Councilman Fischer, seconded by Councilwoman Jarvis, the following resolution was

ADOPTED:      Ayes 5      Maerten, Leible, Fischer, Jarvis, Ostrowski  
                         Nays 0

Resolved to appoint Margaret Giberson as Deputy Town Clerk.

RESOLUTION 73 - 17

**AUTHORIZATION TO DISCARD BROKEN TABLE**

Motion by Councilman Fischer, seconded by Councilwoman Jarvis, the following resolution was

ADOPTED:      Ayes 5      Maerten, Leible, Fischer, Jarvis, Ostrowski  
                         Nays 0

Resolved to remove and discard the broken table in the meeting room, there is no monetary value to the table.

A letter was prepared by GHD Engineer's requesting the DEC to permit the Town to display their fireworks from the Town's property located across from the Town Hall. The letter states that the Town will plow and roll the entire parcel up to the tree lined area to create a

safe area for the fireworks. It further states that the Town will not bring in stone or construction materials to that portion of the parcel. In the future the Town anticipates allowing for farming on the parcel and to permanently utilize a portion of the parcel for the July 4<sup>th</sup> Fireworks Display.

RESOLUTION 74 – 17

**AUTHORIZATION TO MAIL LETTER TO THE DEC**

Motion by Councilman Leible, seconded by Councilman Ostrowski, the following resolution was

ADOPTED: Ayes 5 Maerten, Leible, Fischer, Jarvis, Ostrowski  
Nays 0

Resolved to authorize Councilman Leible to mail the letter to the DEC requesting a permit to display the fireworks on the Town owned property located across from the Town Hall.

RESOLUTION 75 – 17

**SCHEDULE A PUBLIC HEARING TO AUTHORIZE THE EXPENDITURE OF MONEY EXCEEDING \$25,000.00 FOR THE FARM AND HOME CELEBRATION**

Motion by Councilman Leible, seconded by Councilman Ostrowski, the following resolution was

ADOPTED: Ayes 5 Maerten, Leible, Fischer, Jarvis, Ostrowski  
Nays 0

Resolved to schedule a Public Hearing for 6:55 P.M. on April 10<sup>th</sup> to propose a Local Law authorizing the Town to exceed the \$25,000.00 limit for Town celebrations.

**PUBLIC REMARKS OR COMMENTS**

Ann Marie Reeb thanked the Supervisor and the Attorney for the detailed explanations regarding the Public Hearings. She also thanked the Supervisor and Councilman that represented the Town and the Public information meeting held by National Fuel at NCCC. She also said that the retirement of Ken Smith, Dave Gerber and Doreen Genet they will be missed.

Deke Lemieux asked if the Town was planning on a Town wide reassessment. Supervisor Maerten told him that there were no plans at this time. Assessor Coughlin explained that the values she reported on were for new construction or permitted improvements. The resident also suggested that if or when the Town decides to reassess that they hold several workshops explaining the reasons and how it would affect the homeowners. The Assessor does intend to hold informational workshops. Currently new homes selling for \$400,000.00 to \$600,000.00 but can only be assessed according to comparable sales from 2006. That figure is about \$300,000.00 to \$350,000.00. Supervisor Maerten explained that reassessing does not mean that the Town would be receiving more money, but the cost of running the Town would be divided up differently.

Tom asked about the Irish Road tree falling on the power lines which caused a power outage for the area. He has brought attention in the past regarding this unkempt property. He doesn't understand how the Town cannot do anything about this neglected property. Supervisor Maerten explained that he did speak to the Town Prosecutor regarding this long standing issue. The Prosecutor said that the Town does not regulate trees. The unregistered vehicles have been registered. Regarding the house itself it meets the bare minimum according to state code. Regarding the yard itself, nothing can be done until the spring. The issue of the Health Department was also discussed. Supervisor Maerten said that as a member of the fire company he has seen many people living in deplorable conditions but authorities can't just walk into people's homes without a legal reason or probable cause. Several issues were discussed but Supervisor Maerten said that if the Town can legally do anything they will but there are things that the Town and other authorities cannot do. He has found that there are many things the Town can't do and he gave the example that the Town cannot even post speed limits on the Town roads and are required to request the state to consider the Town's request.

**BOARD MEMBERS DISCUSSION**

A work session was scheduled for March 27<sup>th</sup> at 7:00 P.M.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn to Executive Session for personnel issue with Budget Director Don Bergman and move to litigation purposes inviting the Town Attorney at 8:22 P.M. Motion carried.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn from Executive Session and the Regular Meeting at 9:04 P.M. Motion carried.

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Terry J. Pienta, Town Clerk