

TOWN OF PENDLETON
June 10, 2019

A regular meeting of the Town Board of the Town of Pendleton was held at the Town Hall, 6570 Campbell Blvd., Pendleton, NY, on the 10th day of June 2019 at 7:00 p.m.

REGULAR MEETING

Supervisor Maerten called the meeting to order at 7:11 p.m.

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

A moment of silence was observed in honor of the 75th Anniversary of D-Day.

Roll Call:

Supervisor Maerten	Present
Councilman Fischer	Present
Councilman Graham	Present
Councilman Leible	Present
Councilman Ostrowski	Present

Also present:

Deborah Maurer – Town Clerk
Claude Joerg – Town Attorney
Kelli Coughlin – Town Assessor
David Britton – Engineer
Don Bergman – Budget Officer
Wolfgang Buechler – Zoning Board of Appeals Chairman
Mark Walter – Emergency Services Coordinator
Sandra Masterson – Board of Assessment Review

There were nine residents in attendance.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn from the Regular Meeting and enter into an Executive Session to discuss Teamsters' contract negotiations, inviting Town Attorney Joerg at 7:13 p.m. Motion carried.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn from the Executive Session and return to the Regular Meeting at 7:35 p.m. Motion carried.

ADDITIONS OR DELETIONS TO THE AGENDA

The following items were added to the agenda:

- Pavilion at Depeau Park
- Parking Lot Bids
- Bear Ridge Solar Resolution
- Teamsters' Contract Extension
- Executive Session

COMMUNICATIONS

Town Clerk Maurer reported that the Conservation Advisory Council will be holding its monthly meeting this week on Thursday, June 13th at 5:00 p.m. which will include a presentation by Cypress Creek Renewables regarding the Bear Ridge Solar Project. The public is invited to attend.

PUBLIC REMARKS/COMMENTS ON AGENDA ITEMS

There were no public remarks or comments.

ROUTINE BUSINESS

RESOLUTION 146-19

APPROVAL OF MINUTES

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

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

Resolved that the minutes of the Special Meeting on May 27, 2019 be approved as submitted by the Town Clerk.

RESOLUTION 147-19

APPROVAL OF MINUTES

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

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

Resolved that the amended minutes of the Work Session on December 27, 2018 be approved as submitted by the Town Clerk.

RESOLUTION 148-19

AUTHORIZE PAYMENT OF ABSTRACT #10

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

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

Resolved to authorize payment of Abstract #10, that was authorized to be paid on May 29, 2019, for the following expenditures:

General Fund	\$	12,961.84
Highway	\$	22,970.75
Refuse	\$	38,525.81
Sewer	\$	1,445.80
Water	\$	405.44
Total	\$	76,309.64

RESOLUTION 14919

AUTHORIZE PAYMENT OF ABSTRACT #11

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

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

Resolved to authorize payment of Abstract #11, to be paid on June 12, 2019, for the following expenditures:

General Fund	\$	31,297.41
Highway	\$	17,680.20
Sewer	\$	2,563.59
Water	\$	6,467.19
Total	\$	58,008.39

OTHER REPORTS

Supervisor Maerten reported that tax collected for April 2019 was \$126,224.26. This is an increase of \$5,346.87 when compared with April 2018. The year to date received was \$506,854.17 which is an increase of \$5,765.57 from 2018.

Supervisor Maerten commented that the increases in sales tax collection that we have seen since 2018 is good news for the Town. He also commended the Pendleton Veterans Association (PVA) for putting on a great ceremony on Memorial Day.

Councilman Leible reported that the planning of the Fourth of July Celebration is going well. The events include live music performed by Route 33 beginning at 6:00 p.m., skydiver show at 8:30 p.m. and fireworks at dusk. The Pendleton Athletic Booster Association (PABA) will be selling hot dogs, hamburgers and sausage at the event as well. He also stated that he is waiting for bids for the replacement vehicle for the Building Department. Bids are due on June 12th.

Councilman Fischer read the monthly reports for the Highway and Water/Sewer Departments. The Sewer Department had 16 regular and six overtime calls, four sewer breaks and updated two grinder pumps. In addition to that they reinstalled an Omni site monitoring system, reinstalled fixtures and painted the park bathrooms, delivered recycle totes and completed various other activities as needed. The Water Department completed eight final water reads, three sold home

inspections and 130 stakeouts. They also tested water pressure on Lockport Road and turned on water to seasonal users. He reported that the Highway Department chipped brush for six days, finished grading and applied topsoil at the veterans' monument, replaced pipe, installed bubbler, painted the athletic fields, mowed cemeteries and serviced and maintained equipment as needed. The Highway Department crew also completed safety training. Councilman Fischer commented on the great job that the Highway Department did at Mason's Mission Park and thanked C.J. Krantz for the five yards of mulch that they donated. He also thanked the PVA for the Memorial Day Ceremony.

Councilman Ostrowski thanked the Highway Department for the striping that was done at Starpoint's Fricano Field. He reported that the registration period for the Summer Recreation Program is now closed. There were 235 children registered. The program takes place from July 9th – August 15th. Recreation Director Beatrice Mattina is in the process of hiring staff for this program. He spoke briefly on speeding around Town. There are speed enforcement signs around Town that will track data, that the Board can review, on the speeds that are recorded on vehicles that pass. Councilman Ostrowski also spoke about the LED conversion for the streetlights. This project is moving along. He reported that the Recreation Committee has received a letter from the Lions Club committing up to \$10,000.00 towards the purchase of a new pavilion for Depeau Park. The Love of Skin has also verbally agreed to donate \$4,000.00 towards this project. He thanked both for their generous donations.

Supervisor Maerten reported that extra speed patrols have been scheduled with the Niagara County Sheriff's Department. He and Highway and Water/Sewer Superintendent Stowell recently met with the Niagara County Highway Department who has committed to conducting an elaborate traffic study on Bear Ridge Road and possibly another location in Pendleton. He hopes that the feedback from this study will help the Board address speeding and traffic issues throughout the Town.

Councilman Graham read the Building Department report from May stating that 41 building permits and 25 contractor licenses were issued. Five building permits have since been completed. The department completed 35 visual inspections on various projects and sent out three violations. He also reported that the month of May was very wet and the Building Department was busy addressing drainage issues. Councilman Graham also reported that the construction for Bobcat of Buffalo and the new Holiday Inn Express is underway which is very exciting for Pendleton. He also stated that the Town Board has been conducting interviews for the Code Enforcement Officer. Councilman Graham also reminded everyone that Wendelville Fire Company will be holding its annual Lobsterfest on June 24th. He also remarked on the opening of Pelitera's Fitness, a new business in Pendleton.

Engineer Britton informed the Board that the draft stipulations for the Bear Ridge Solar Project are currently under review. He also reported that the MS4 Annual Report has been submitted and that he has been working with Superintendent Stowell on potential resolutions for the culvert problem on Tonawanda Creek Road.

Budget Officer Bergman reported that we are caught up with the 2018 financial information. He also requested that the Town Board discuss potential 2020 projects before starting the budget process. Budget letters will be coming out on August 1st. Supervisor Maerten echoed how important it is to start thinking about next year's projects.

DEPARTMENT HEADS

Town Clerk Maurer reported that the Town Clerk's office turned over \$46,603.39 to the Supervisor for Local Shares for the month of May. Summer Recreation Program Registration and Building Permit fees made up the majority of that large sum. In addition, she stated that Water Billing Clerk, Rita Dispenza, reported a total of \$122,446.20 was received from water and sewer payments during the month of May. Clerk Maurer reported that registration for the Summer Recreation Program is now closed and that she felt the new process of paying and registering at the Town Clerk's office went very well. Recreation Director Bea Mattina complimented the office on doing a great job with this process. Clerk Maurer thanked her deputy clerks for all of their hard work as well. She also reported that as of July 1, 2019, all payments made to the Town, with the exception of Town Court, will be processed at the Town Clerk's office. She is also in the process of creating an option for online bill pay which will hopefully be available by the end of this year.

Highway & Water/Sewer Superintendent Stowell reported that the Highway Department will be doing roadwork on Mapleton Road between Bear Ridge and Campbell Roads and Aiken Road between Lockport and Mapleton Roads. He reported that there are drainage issues in the park as well as a rash of steel culverts caving in. The Highway Department is sharing services with Niagara County for milling projects and paving. The Town regularly shares services with other municipalities in Niagara County. Superintendent Stowell has been in contact with the resident who has a drainage issue. He also stated that the trailer mounted generator will be delivered soon.

Assessor Coughlin reported that Grievance Day was held on May 28th with four residents grieving their assessments. Results were received from the Board of Assessment Review and have been forwarded to the county. She has been out in the field taking pictures of new builds in order to keep her files current. She also reported that she has been scanning last year's and this year's blue prints. Additionally, during the month of March there were 12 sales, six of which were arm's length sales. They averaged \$68,575.00 over the assessed value. In April there were 15 sales, three of which were arm's length sales averaging \$33,667.00 over the assessed value. The Town's current equalization rate is 74%.

NEW BUSINESS

RESOLUTION 150-19

PROCLAMATION HONORING JOHN "JACK" STRIEGEL

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

ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski

Nays 0

On behalf of the Citizens of the Town of Pendleton, we hereby issue this proclamation honoring commitment and service to the community.

Proclamation Honoring John "Jack" Striegel

Whereas, John Striegel has been a long-time resident of the Town of Pendleton and an asset to his community; and

Whereas, Mr. Striegel served the Town of Pendleton as a member of the Zoning Board of Appeals prior to assuming the duties of Code Enforcement Officer and Building Inspector, serving in this position from 2002 to his retirement in 2019; and

Whereas, Jack is a proud United States Army veteran, having served our great country honorably from 1966 to 1969, earning recognition for his service receiving the National Defense Service Metal, Vietnam Service Metal, Vietnam Campaign Metal, and Army Commendation Medal; and

Whereas, Jack Striegel is a highly respected gentleman, who always warmly greeted coworkers and residents, and whose presence will be missed in the Town Hall as he begins to enjoy a well-earned retirement. Therefore:

The Town Board of the Town of Pendleton, on behalf of the citizens of this great town, hereby recognizes Jack Striegel and thanks Mr. Striegel for his dedication and contributions to the Town of Pendleton.

Supervisor Maerten briefly explained that seven bids, for the Fisk Road Rehabilitation Project, were received by the Town and opened on June 4, 2019. The lowest bid received was from Accadia Site Contracting, Inc. in the amount of \$2,319, 700.37. Everyone is quite happy because the bids came in below the engineer's estimate. He thanked Dave Britton and GHD for project management and Clark Patterson Lee for their engineering work on this project. The construction is expected to begin in July.

RESOLUTION 151-19

FISK ROAD PROJECT BID

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

ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski

Nays 0

Resolved to accept the low bid of \$2,319,700.37, awarded to Accadia Site Contracting Inc., for the Fisk Road Highway Rehabilitation Project (PIN 5761.70, Contract D035657), contingent upon NYSDOT approval.

RESOLUTION 152-19

MAIN ROAD – CLOSURE REQUEST

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to approve the temporary closure of Main Road on June 18th from 6:00 p.m. until 9:00 p.m.

Town Clerk Maurer requested that the Board consider leasing a postage machine that will be available for use by all departments. She provided cost saving statistics and quotes from Sourcewell, Neopost and Pitney Bowes. Supervisor Maerten reminded the Board that this was previously discussed at prior meetings and resulted in a decision that this would be a cost neutral move that would also increase our control over postage and departmental accountability.

RESOLUTION 153-19

POSTAGE MACHINE

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to accept the lowest bid price of \$73.19 per month, from Neopost, for a term of 63-months, to lease an IN360 postage machine, rate to include leasing and maintaining the equipment, meter rental and rate updates.

RESOLUTION 154-19

INCREASE TOWN CLERK PETTY CASH

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to establish the following petty cash funds: Town Clerk \$250.00, Tax Collector \$300.00, Water District \$100.00 and Sewer District \$100.00. (Supersedes RESOLUTION 14-19)

RESOLUTION 155-19

PENDLETON FARM & HOME DAYS

Motion by Councilman Fischer, seconded by Councilman Ostrowski, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to provide the \$10,000.00 stipend to the Pendleton Farm & Home Days as partial funding for 2019.

RESOLUTION 156-19

HIGHWAY DEPARTMENT – ROLLER PURCHASE

Motion by Councilman Leible, seconded by Councilman Graham, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to approve the purchase of a roller from Admar Supply, at a cost of \$15,501.00, for the Highway Department.

RESOLUTION 157-19

HIGHWAY DEPARTMENT – PURCHASE OF TRAILERS

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski
Nays 0

Resolved to approve the purchase of a large trailer at a price of \$8,102.00 and a small trailer for \$3,931.00, from LOE Trailer Sales, for the Highway Department.

RESOLUTION 158-19

HIGHWAY DEPARTMENT – PURCHASE JOHN DEERE GATOR

Motion by Councilman Leible, seconded by Councilman Graham, the following resolution was ADOPTED: Ayes 5 Maerten, Fischer, Graham, Ostrowski
Nays 0

Resolved to approve the purchase of a used, gas powered John Deere Gator, from Professional Turf Services, at a cost of \$5,095.00, for the Highway Department.

Supervisor Maerten led a discussion highlighting some changes made during the Teamsters' contract negotiations.

RESOLUTION 159-19

TEAMSTERS' CONTRACT EXTENSION

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

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

Resolved to approve the contract extension between the Town of Pendleton and the International Brotherhood of Teamsters, Local 264 for the period of January 1, 2020 through December 31, 2021.

Pavilion at Depeau Park

Councilman Ostrowski reported that the Recreation Committee received a bid from HMP Builders to construct a 20' x 30' x 8' pavilion at Depeau Park for \$14,000.00. He reminded the Board that the Recreation Committee had already received commitments for contributions for construction of the pavilion totaling \$14,000.00. Councilman Ostrowski also requested to waive the building permit fee for the construction of the pavilion. Supervisor Maerten requested that the Recreation Committee obtain two more bids before moving on with this project.

RESOLUTION 160-19

PARKING LOT PAVING

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

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

Resolved to give Councilman Leible permission to secure bids for paving of the Town Hall parking lot.

RESOLUTION 161-19

BEAR RIDGE SOLAR PROJECT RESOLUTION

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

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

TOWN OF PENDLETON TOWN BOARD

Resolution Confirming that the Bear Ridge Solar Project Violates the Town of Pendleton Comprehensive Plan and Zoning Law

WHEREAS, Bear Ridge Solar, LLC ("Bear Ridge") has initiated the preliminary steps toward submitting an application for a 100MW solar energy facility, with associated facility infrastructure (the "Project"), to be located in the Town of Pendleton and Town of Cambria; and

WHEREAS, the Project "will represent one of the largest utility-scale solar power plants in New York State" (Preliminary Scoping Statement, § 1.1, p. 1); and

WHEREAS, Article 10 of the New York Public Service Law ("PSL") removes the approval jurisdiction over the Project from the local communities and vests it with the New York State Board on Electric Generation Siting and the Environment (the "Siting Board"); and

WHEREAS, even though the local communities are deprived of the decision-making power with respect to the Project, PSL § 168(3)(e) provides that the Siting Board "may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the board, unless the board determines that: . . . the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the application . . ."; and

WHEREAS, the Siting Board may only elect to excuse compliance with applicable local laws *if* it finds the restriction to be unreasonably burdensome, which is not a decision the Siting Board may take lightly or without regard to the facts and circumstances of the Project and the local community; and

WHEREAS, the PSL provides municipalities with an opportunity to present evidence and participate in the process in relation to compliance with local laws and requirements; and

WHEREAS, despite the Town of Pendleton and Town of Cambria having nominated *ad hoc* members to the Siting Board, as provided for by law (PSL § 161(2)), the *ad hoc* members have not yet been appointed;

NOW THEREFORE BE IT RESOLVED by the Town Board of the Town of Pendleton as follows:

1. The Town of Pendleton does hereby formally oppose the Bear Ridge Project within the Town of Pendleton because, among other reasons, the Project does not comply with the Town of Pendleton's comprehensive plan and zoning law. By way of example, Section 4.2, Objective No. 4 in the Town of Pendleton's comprehensive plan is to protect existing and encourage more agricultural activities in the Town. The Project takes viable agricultural land out of use for decades or more, which is a significant impact on the community and is in violation of State policy. Moreover, Section 247-68.18 limits large-scale solar installations to the light commercial, medium commercial, light industrial, and special light industrial zoning districts. The Project is proposed to be located primarily in the R-2 Residential zoning district. The Town of Pendleton hereby calls upon the Siting Board to apply the Town's zoning law to the Project, as required by PSL § 168 and deny a certificate.

2. The Town of Pendleton will endeavor, through all reasonable means, to make certain that the residents of the Town of Pendleton will be heard through the Article 10 process. The Town of Pendleton hereby requests that the *ad hoc* members be appointed to the Siting Board immediately, in compliance with the PSL.

3. The Project will have significant adverse impacts to agricultural lands within the Town of Pendleton and Town of Cambria, in violation of the State's policy of protecting viable agricultural land. The Agricultural Districts statute, codified as Article 25-AA of the New York Agriculture and Markets Law ("AML"), was enacted upon a finding that "many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes due to . . . deleterious side effects resulting from the extension of nonagricultural development into farm areas." *Town of Lysander v. Hafner*, 96 N.Y.2d 558, 563 (2001) (internal quotation and citation omitted); *see* AML § 300. Related to this issue is the Project's refusal to consider proper alternatives. Bear Ridge has relied upon 16 N.Y.C.R.R. § 1001.9(a) for the proposition that it need not consider alternative locations that are better suited to solar energy development, which would not impact agricultural land to such a degree. This regulation provides that a private facility may limit its identification and description to sites owned by, or under option to, such private facility applicant or its affiliates. However, where a private facility developer is actively seeking such real property rights at the earliest of stages, it should consider the ability to secure similar real property rights in alternate locations.

4. The Town of Pendleton has the constitutional authority over the management and operation of its roadways and rights-of-way. N.Y. State Constitution, Article IX. Thus, the Town retains jurisdiction over its roadways and rights-of-way and reserves the right to deny work on or access through the same.

PASSED AND ADOPTED BY THE TOWN BOARD OF THE TOWN OF PENDLETON on the 10th day of June, 2019.

RESOLUTION 162-19

SCHEDULE PUBLIC HEARING

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

ADOPTED: Ayes 5 Maerten, Fischer, Graham, Leible, Ostrowski

Nays 0

Resolved to schedule a Public Hearing on July 8, 2019 at 6:55 p.m. to allow public comment on the proposed transfer of funds required for the purchase of a roller, two trailers and a John Deere Gator for the Highway Department.

PUBLIC REMARKS/COMMENTS

A resident that was in attendance addressed the Board about ongoing code violations at his neighbor's property. Supervisor Maerten explained to the resident that this matter is in the Town Prosecutor's hands at this time. A lengthy discussion occurred regarding this property and the code violation process. The resident provided information on additional code violations that need to be addressed. Supervisor Maerten stated that he would provide this information to the Building Inspector to follow up on.

Another resident mentioned that Five Corners now has a new "stop-ahead" sign that must have been installed by the Amherst Traffic Safety Board.

A resident asked the Board to make sure that the school district, fire department and Niagara County Sherriff's office be informed of when the construction on Fisk Road will begin.

Board of Assessment Review Chairwoman Sandra Masterson asked the Board if there is any plan or schedule for a town wide reassessment. Supervisor Maerten stated that there has been no discussion on this at this time.

Superintendent Stowell mentioned that the Town of Pendleton's share of the Consolidated Local Street and Highway Improvement Program (CHIPS) funding will be cut by \$10,000.00 but rumor has it that it could be reinstated at the last minute.

BOARD MEMBERS DISCUSSION

Supervisor Maerten announced that the next Work Session will be held on June 24, 2019 at 7:00 p.m.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn from the Regular Meeting and enter into an Executive Session to discuss litigation, inviting Town Attorney Joerg, at 8:47 p.m. Motion carried.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn from the Executive Session and the Regular Meeting at 9:15 p.m. Motion carried.

Deborah K. Maurer, Town Clerk