

DRAFT
Board Meeting
Town of Shelby
4062 Salt Works Rd. Medina, NY

August 8, 2023 7:00pm

Please note: We are live streaming our meetings through YouTube.
See www.townofshelbyny.org and click on the link.

Present:

Scott Wengewicz, Supervisor
Steve Seitz, Councilman
Jeff Schiffer, Councilman
Eddie Zelazny, Councilman
Kathleen Bennett, Attorney
Darlene Rich, Town Clerk
Dale Root, Hwy Superintendent
Claude Grimes, Constable
Dorothy Nolan, Deputy Clerk
Miranda Bennett, Bookkeeper

Excused:

John Pratt, Councilman
Dan Wolfe, Code & Zoning Officer
Trisha Laszewski, Assessor
Kirk Myhill, Planning Board Chairman

Others:

Mike Rich	Alan Bushover
Linda Limina	Elexis Dixon
James Zelazny	Brian Murray Sr.
Sherry Wheatley	Karen Jones
Mary Zelazny	Julie Wolter
Bill Wolter	Christine Pask
Gabreille Barone	

Called to order at 7:00 PM
Pledge to the flag

There is one add on- A resolution for the Code of Ethics for the Town of Shelby

Public forum regarding agenda items only-Karen Jones. Resolution just added regarding the Code of Ethics was actually one on the things she wanted to talk to about tonight. It was signed in 2019 in the section 6 employee conduct Code of Ethics and

she wanted to bring up Article 18 of the General Municipal law about conflict of interest with elected officials before one's own agency and he or she shall not receive or enter into any agreement for compensation or services or before any agency rendered in relation to any matter and before any agency which she is an officer member, employee or any municipal agency or has the power to appoint, and in part E disclosure of interest that a member of the town board or any officer or employee paid or unpaid who participates in the discussion or gives official opinion on any legislation before the town board shall publicly disclose on the record the nature and extent of any direct or indirect financial or private interest he or she has in such legislation. She wanted to ask about a resolution that some but not all of the board were involved in in 2020. Resolution 85-20 Granting Municipal consent for formation of a sewage works corporation. It looks like the members signing were Jeff Smith, William Bacon, Stephen Seitz, John Pratt, Ryan Wilkins and was duly adopted. She went to the Sewage Works Corporation Meeting last week in Genessee County in Batavia and the director of the agency there, Mr. Massey told her that Jeff Smith had financial interest and he said it was Smith property where the sewage pipe was going to be dumped in to the creek and it seems to her that according to the employee conduct code of ethics he should not of entered into that agreement or lead members of this board to do so without informing you of any interest financial or otherwise direct or indirect and if a Smith Family member I would see that as indirect. That was her first concern which you just mention you added a resolution on ethics which is why I brought this up now. The other thing that I have which is on the agenda for tonight you say you're going to have a resolution to approve the July minutes. The Supervisor report is not online and hasn't been. In fact, none of the reports of any kind have been on line that I have been able to find any written report so she doesn't see the board can vote to approve the Supervisors report if there is no written report for the public to see. Perhaps it should be tabled. Work sessions were great as you could see what the town board discussing and it would be on the agenda for the next meeting. Clerk report is always on line and the others are not. Would like to read them ahead of time. Transparency is a major problem and I am not putting blame on this board for that. I am saying that I hope this is something you insist on as I know most of you also have spoken about transparency. Agenda doesn't have the text for the resolutions.

Highway Report: (Dale Root)-Helped Ridgeway and Barre on a few projects. Building a few head stone foundations, picking up deer, conducted stakeouts, a few burials, repaired the fence and moved the dumpster. Repaired water main break on Freeman Road just past Shelby Basin. Worked with Town/Carlton and Barre. Thank you to Doug Fuller for finding it early in the morning. Shoulders were installed on Martin Road plus a few hours of concern and on the west side of Water Works Rd. Again, other towns came to help. Thank you, T/Yates and Ridgeway. Graded and cut shoulders on Bell Road. Grader paved Johnson Road, Hoffman Rd. Dunlop, the east side of Dunlop Rd. and Southwoods Road, Tibbits Rd, Oak Orchard Ridge, part of Sour Springs and Barber Rd.

Thanks to Tom Bentley Town of Barre for doing a great job. Also assisting Shelby were Clarendon, Shelby MEO's. It was a true testament of Shared Services. They were able to get over 7 and a half miles of needed road repair. Thanks to Barre Stone and Matt Powell, the plant operator. With 7 and a half miles of blacktop and 2 miles of dirt roads are repaired.

Assessor's Report: (Trisha Laszewski- Excused

Planning Board Report: (Kirk Myhill)-Excused

Zoning & Code Enforcement Report: (Dan Wolfe)- Excused

RESOLUTION NO. 57-23

RESOLUTION TO APPROVE MINUTES OF THE JULY 11, 2023 TOWN BOARD MEETING MINUTES

Motion by Councilman Seitz and seconded by Councilman Zelazny

Ayes- 4

Opposed- 0

Absent-Pratt

Motion carried

RESOLUTION NO. 58-23

RESOLUTION TO APPROVE TOWN CLERK'S REPORT (JULY)

Motion by Councilman Zelazny and seconded by Councilman Schiffer

Ayes- 4

Opposed- 0

Absent-Pratt

Motion carried

SUPERVISOR REPORT- JULY – Again, no Supervisor report, it's still being balanced out, it's not automatic, it has to be done manually, that's why it's not done on time. Report will be on next month's agenda.

RESOLUTION NO. 59-23

RESOLUTION TO PAY CLAIMS AGAINST THE TOWN

General-	\$ 82,510.45	Water 6-	\$ 256.37
Highway-	\$ 249,498.75	Water 7-	\$ 298.69
Water 1-	\$ 375.24	Water 8-	\$ 133.58
Water 2-	\$ 58.66	Water 9-	\$ 131.68
Water 3-	\$ 590.81	Water 10-	\$ 92.74
Water 4A-	\$ 315.13	Water 11-	\$ 112.21
Water 4B-	\$ 224.43	Water 12-	\$ 61.11
Water 5-	\$ 19.47		

Motion by Councilman Seitz and seconded by Councilman Shiffer

Ayes- 4

Opposed- 0

Absent-Pratt

Motion carried

RESOLUTION NO. 60-23

RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SHELBY

WHEREAS, Supervisor Scott Wengewicz has introduced for consideration Local Law No. 1 of 2023 entitled “A Local Law Establishing the Code of Ethics of the Town of Shelby” (the “Local Law”); and

WHEREAS, the purpose of the proposed Local Law is to establish standards of conduct expected of officers and employees of the Town of Shelby (the “Town”); and

WHEREAS, the Town Board of Trustees (the “Town Board”) desires to comply with the Article 8 of the Environmental Conservation Law (“SEQRA”) and its implementing regulations set forth at 6 NYCRR Part 617 with respect to the proposed Local Law.

NOW, THEREFORE, BE IT RESOLVED that the Town Board hereby classifies the proposed Local Law as a Type 2 Action under SEQRA; and

BE IT FURTHER RESOLVED that the Town Board will hold a public hearing on September 12, 2023 at 6:30 p.m. to hear all person’s interest in the above-referenced Local Law and to consider the adoption of such Local Law; and

BE IT FURTHER RESOLVED that the Town Clerk shall cause notice of such public hearing to be published in the official Town newspaper in accordance with all legal requirements.

The adoption of the foregoing Resolution was moved by Steve Seitz, seconded by Jeff Schiffer, and duly put to vote, which resulted as follows:

Scott Wengewicz-Aye

Steve Seitz-Aye

Jeff Schiffer-Aye

Ed Zelazny-Aye

John Pratt-Absent

The resolution was thereupon declared duly adopted.

Supervisor said September 12th, next board meeting at 6:30 pm is when we will have the public hearing for that, prior to the board meeting. The attorney said the link to the DEC’s SEQRA webpage -it is not the link to the actual regulations, however, this page has a link to the regulations and is: <https://www.dec.ny.gov/permits/357.html>

Board comments –

Councilman Seitz- asked the Highway Supt. if he is going back around and mowing the first passes of the roads and continue doing that or was he all done mowing. Dale Root said he will continue mowing all through the summer, he will be coming across 63, maybe next week. He has a MEO out for a couple of days for personal reasons and is a little short and he’s driving truck for the county for a couple days. Steve said thanks he just happened to notice some of the roads were getting redone and they were looking good so he just wanted to thank him on that.

Public Comments-

Linda Limina-wondering about the supervisor report. She understands there is some type of software issue but could the previous reports be available through the clerk or bookkeeper if they wanted to review those? Town clerk said she would get them for her. Must be coming up on budget season shortly. Will those be public meetings and will we be able to comment or ask question at those? Supervisor Wengewicz said they were not public. He stated they come up with a budget and it's distributed to the board, then we have a public meeting on it. Linda asked that some point before it becomes approved can they comment on it. Supervisor said there will be a public hearing on it. Sherry Wheatley asked about the outhouse that was approved in May that they were going to sell her for a dollar. Kathleen Bennett, said it slipped her mind and she would get it drafted to her and get to her sometime this week. Sherry said it needed a lot of work and she wanted to get to it before it snows. Kathy apologized and said she would get to it this week.

Karen Jones-emailed all of the board members but at least 5 emails bounced back as not being able to be received, software glitches and things like that. That is another transparency issue. She doesn't know if Eddie or Steve got her email. Steve said he got part of it. She asked the questions that were on the email to the full board so they would be in the record. A lot of us are wondering about the waste water pipeline that for us has come up out of nowhere and yet has apparently been in the works a long time but it keeps changing. That it was a lot of our understanding that the waste water pipeline was supposed to go the Medina Sewage Treatment Plant and then that had expired but then in 2020 this new agreement was signed with Shelby. Her questions were:

1. Is her husband and her and her family correct in assuming that the pipe is scheduled to go through her yard on Route 63? Where exactly is the discharge point for the treated waste water? What Mr. Massey told her it was Mr. Smith's property and that 6 million gallons of effluent water is going to be discharged directly into Oak Orchard Creek. This is not what people in this community understood was going to happen daily and that level of discharge has an extremely adverse effect?
2. How exactly did the signing of the resolution approving the formation come about especially how was Mr. Smith able to bring that resolution to the board and sign it himself if it's on his property?
3. Where are the plans and diagrams that were given to the board at that time and are they the same diagrams and plans that are now in the works or did some of the board members here sign something different in 2020 than what is being proposed right now and this board has not been able to vote on it?
4. Has the zoning board been given these documents?
5. Was it ever taken to our code enforcement officer?
6. Which person or agency determined that the resolution superseded the towns own wildlife overlay district law and if so what was their reasoning?
7. Was the water supervisor in Medina consulted about the plan and was he allowed or encouraged in his official capacity to share his knowledge and input with this board regarding the impact of that much daily water being discharged?

8. Was there any discussion with the village of Medina regarding the project and how it might impact future perspective businesses hoping to utilize Medina's plant?
9. Was the Highway Supt. consulted regarding the impact of the pipeline on the road and the cost to Shelby of the construction or destruction of that road or are we all going to bear the cost of Genesee's behemoth?
10. What if there is a break on the line anywhere on Route 63-will both Orleans and Genesee say it's a state highway and it's not their responsibility? Considering the amount of people that travel Rot 63 I think its an important question and Highway Supt. should be involved.
11. According to the updated Western Comprehensive Plan which Shelby signed in 2019 much of Shelby including where their pipeline is planned is in a designated flood zone. I think since 2019 the water has actually risen in the refuge and in Oak Orchard Creek as we know it, we have seen the flooding change since 2019 and it's gone up. And Stamp Sewage Works is arguing it will not be an issue when our maps clearly say otherwise. I think that the newest members of this board need to be part of this process and need to be allowed to review those plans and the existing members that were here all along I think there is also deception that they have faced that what's being planned now is not what they agreed to. But again, I am just going on what I have kind of stitched together. There are so many layers to this. of when did this When people heard STAMP and a lot of us, me included were all for it. We want jobs but it looks now like Genesee County is the one reaping the benefit. Orleans – what are we getting? We are getting the discharge directly into our creek. We are getting the damage to our roads. We are not getting a dime. The Smith family is. Perhaps others that I don't know about because again these things that are signed -everything is so secretive and I know you do value the role of the board in protecting citizens.

Kathy Bennett explained what she knew and what she found. The resolution that was improved in September 2020 was a resolution required pursuant to the New York State Transportation Corporation Law and was Genesee County was doing is forming a sewage treatment works transportation corporation law and when you do that you need consent form the health departments and then consent from the municipalities. Before the Town of Shelby passed that resolution the Genesee County Health Dept. passed a resolution consenting to the formation of the corporation and so did the Orleans County Health Dept pass a resolution consenting to the formation of that corporation. Karen asked when- Kathy said in September 18, 2020. It was signed by Paul Pettit, Orleans County Public Health Director. So that was the 2020 resolution. After that Shelby was then asked to pass a resolution in March 2021 consenting to the construction of the line. Karen asked if that was where the issue is with Mr. Smith because of his property. Kathy said it was her understanding it was not his property at the time. It was also her understanding that was also administerial administrative approval. The town had no authority under any law or case law or opinion or anything anywhere that she could find that would have allowed them to say no. Karen- Yates bought Article 10 , Kathy article 10 is different. -Karen -she is just saying the word administrative, like their hands are tied, other communities have said no. Kathy Article 10 is different -it has a whole process

to go through with the public service commission. This is approval required on the transportation corporation law. She looked at it, she read it, there was really no basis. And the other things to keep in mind is at the time the town was told that this was going to be strictly under the state highway and as long as they got their easement and approvals from the DOT to run it under the state highway the town had no basis for any other approvals. There was no planning approval for the town to give, there was no zoning approval for the town to give, there was no water approval for the town of Shelby to give with respect to this project. The water discharge approval came from the New York State Department of Environmental Conservation. And it's also her understanding why it discharges downstream from the Indian reservation because they did not want it discharging into that creek upstream on the nation's lands. It had to be down stream and that's what lead to them coming up with the discharge point in the town of Shelby and running the line down the state highway. That was the towns understanding at the time. That s what they were told. Karen-Did the members even get to see these plans or did you just tell them they had to sign it? Kathy- I did not tell them anything in terms that they had to sign it. Kathy advised Bethany at the time who was the former town attorney who asked for her opinion and Kathy told her there was administrative approval and there was really no basis for the town to say no. If the town said no, they risked a lawsuit which they would have to pay to defend. Karen- It just seems to me that the town didn't even get to weigh in on this. It doesn't make any sense. So, the pipe is going to be under the road and nobody has a say. Kathy- It's the state DOT so it's a state road so it's the sate DOT that ultimately decides whether to allow that pipe to be placed under its highway or not. The town also has no liability with respect to the pipe or the land. It's all on the sewage treatment works or on the town of Alabama. Karen-I just don't understand how Genesee County is trying to have eminent domain in Orleans County on property that belongs in Orleans County. Linda -Are you saying there's no way Shelby or anybody could stop that water from being put into Oak Orchard Creek in the Town of Shelby? Kathy-they would have had to objected to the issuance of the speedys permit by the New York State Department of Environmental Conservation. Karen-did you then give them an opportunity to look at the speedys permit. Did the town board member even get to look at any of it? Kathy- The DEC sent it to the Town- I don't know what happened to it. I was not the town attorney at the time.

Motion by Councilman Zelazny and seconded by Councilman Seitz to adjourn the Town Board Meeting at 7:38pm

Motion carried

Respectfully submitted,

Darlene Rich, MMC, RMC
Town Clerk