

Village of Phoenix
Regular Board Meeting
Tuesday, June 5, 2018 at 7:00 PM
Sweet Memorial Building
455 Main Street, Phoenix, NY 13135

Present: Mayor Ryan Wood
Trustee Paul Griser
Trustee John Musumeci
Trustee David Pendergast
Absent Trustee Caleb Sweet

Chief Marty Nerber
Village Clerk Roxanne Demo
Attorney Steve Primo
Administrator James Lynch

2 Public in Attendance

Mayor Ryan Wood began the Board Meeting with a salute to the flag at 7:00 PM.

M&E Empire Marketing, LLC

David Eymer is here to address the contract that we had with National Grid and the fixed rate program and the old pump station. A termination fee was generated once the meter was taken out, he has a contract to have a six month extension with the new pump station and that will waive the termination fee.

Miller Engineering

Doug Miller said that Marina draft report is ready and next meeting it should be finalized. Miller is following up on the letter received from the DEC for clarification for offsets for EJ Manufacturing coming in at Industrial Park. The Lock Street CDBG pipeline job is ready to bid and they will send the documents over to Bill Havener at Oswego County Health Department for his review. Wastewater follow up with DEC with the permitting, he has development a proposal on sewer use laws, mercury program and industrial pretreatment program. They will have to coordinate a couple of those items with legal, the sewer use law and if we want to go with sewer use permits/vs individual agreements. Mayor said he'd like to see it permitted. Miller is following up with the consent order to develop a facilities plan report for the expansion of the WWTP plant to go to a 2mg plant. Based on the discussions at the last meeting there are some subtle changes to the hydraulic analysis that we agreed to and moving forward long-term. Mayor Wood asked Doug what the proposal fee is for the study to go to a 2mg plant. Miller said the permitting was \$15,000, hydraulic analysis and facilities report is \$75,000 proposing do that that work underneath the current EFC funding, they'll have to discuss that with EFC and based on our amending consent order this is the approach we're taking. Mayor said at the same time can we do upgrades at the plant; the roof needs to be replaced along with upgrades to the screen and grit room.

Mayor and Trustee Comments

Mayor Wood said with Kristy LaManche's help we submitted an application to the Regional Economic Development Council (REDC) for \$10 million. Each region receives \$10 million a year. We have consolidated funding application (CFA) coming up soon, one is the CDBG that's doing the Lock St project if we go that route we would upgrade the wastewater project, the other one is the green infrastructure which would be the green roof for the wastewater treatment center.

Trustee Griser had nothing.

Trustee Musumeci asked about a sidewalk done last year that the soil has settled and would the DPW fill it in. Administrator Lynch will take a look at it.

Trustee Pendergast reported that the brand new sidewalk is smashed on Main St. from someone driving on it. Lynch is going to call Pioneer Masonry tomorrow. Mayor said our local law says you need to maintain your sidewalk so if it's that bad the homeowner will have to redo it.

Department Comments

Chief Nerber said that they will begin the SRO interviews for the school on the 21st, they have six applicants.

Administrator Lynch said that Canal Days are this Friday, June 8th; generally we receive a letter from a student inviting everyone. The water operator with the Town has resigned and he's working with them to collect their water samples. According to our water contract we can charge our rate for labor, benefits and 10%. June readings we will be done for Co. Rt. 264, Oswego River Rd. and Co. Rt. 12. The Town has asked us to provide a proposal to take over water operations for the Town. Mayor and Lynch will get together to discuss the proposal.

Attorney Comments

Memorial Park- School District Status

Attorney Primo said that both he and Jim Lynch had received word back from Senator Barclays office that the alienation request authorizing sale proceeds from the Memorial Park premises sale to the school district has to be utilized for park purposes; the NYS Senate and Assembly bills to be signed into law will require Village reinvestment of the sale proceeds for that purpose despite that we have independently invested sums substantially exceeding that amount toward park purposes including in several very recent situations; they asked us to document, we could and did within the space of a couple days, quite clearly in a detailed letter. Regardless of this news, which was not totally unexpected, Primo and Jim Lynch had been discussing our options and Jim also apprised Primo of some additional related projects and plans for the relatively near future including with some separately acquired funding and where there may very likely be required a village contribution, match requirement or simply an additional cash infusion to complete the project, also no one from the State could provide any particulars as to this reinvestment obligation (such as a time limit within which the contribution or reinvestment must be completed). As such one option is we may very well be able to utilize these sale proceeds funds for a short term internal loan such as to bridge the repayment of some other borrowings,

including from our general fund and including toward other park/recreation and/or similar small or larger scale projects falling under those permitted qualifying park/recreation projects.

Primo also advised that in light of the conditional approvals of Bills in the Senate and Assembly authorizing the alienation, and notwithstanding that the Board had previously conceptually approved, by resolution, the intended transaction and execution and delivery of the contract of sale, the performance of those acts and duties required of Village thereunder in support of same, and making the appropriate findings respecting the Villages need for and use of such lands, and accordingly it appears, evidencing satisfaction of such conditions precedent to the authorization of sale as to Village property, a formal resolution is deemed advisable including a home rule request to the State Senate, Assembly and Governor, and accordingly Primo articulated background relating to and then the motion for consideration as follows:

The Village of Phoenix Board of Trustees having determined the parcel commonly known as Memorial Park, having been for several decades, by most accounts, abandoned in substantial part due to its degrading and unsafe conditions, some including a large in ground municipal scale pool, demolished and filled in with its own and possibly other C&D debris, a hazardous substance by todays definition, a former paved and cement formed basketball court area long since crumbled and deteriorated, a playground area still in part encumbered by the latent dangers offered by the broken down former park improvements parts of which in some cases still exist: swings, teeter totters, slides all damaged years ago, no longer usable and in fact were still existing presenting some danger as an attractive nuisance to children; finally, the relatively modest veterans memorial placed in the park has been many years ago relocated to the local VFW). The Village having expressed many years earlier, in fact when the recreational improvements may have still retained some utility, that it could no longer maintain same and that the School District with assistance from the Town Highway Department could likely manage it and with an incentive to do so since the District had in their students a captive audience for use of the park for baseball, basketball, tennis and the like. For a relatively short period of time ie from 2006- perhaps 2010 the village had formal agreements with the district, (and perhaps the Town as well) providing, in light of the Districts regular recreational uses that the Villages ownership rights as to the park were superior to any other party, that the premises are deemed held in public trust for the good of the public, and that any grant of usage would be subject to certain use policies intended to ensure fair and equitable usage by all parties, persons, groups and organizations and subject to only reasonable policies and regulations; including in cooperation with such other groups and individuals and ensuring the ballfield, which is generally maintained in reasonably good condition by those individuals and organizations involved in youth and older teen leagues; and

in addition, it was felt that the District really is the logical choice for ownership and operation of the memorial park premises since immediately adjacent to the District, their respective School premises and are served by roads and sidewalks also serving the schools and their students; and has the capacity to properly care for the premises;

it was also acknowledged the Village is aware that the Districts past uses of the lands have been largely as recreational premises for the benefit of elementary, middle and high school students attending classes in their respective schools situated adjacent and nearby the Memorial Park

lands subject hereof; The Village therefore determined, and again determines and affirms such prior determination that the lands have been and are not needed for any proper Village purposes and are therefore surplus lands of the Village; the Village accordingly in early late 2016 continuing through early to mid-2017 entered into discussions with the District relating to the possible sale of such lands to the District; as the same regardless of being surplus was nonetheless required to be sold for fair market value, the Village first obtained a market value study from a local realtor; the value arrived at was thought to be exceedingly low and upon inquiry was based in part on the location of the parcel and restricted access except however relative to the District; pedestrian and vehicle traffic would be more easily accessed from the Districts premises; accordingly a second appraisal was commissioned to be completed by an MAI Designated Firm and appraiser (Pomeroy) known to be reputable having completed thousands of appraisals over the years, providing quality testimony in State Supreme Court commercial and industrial property tax review proceedings and having participated in many large government sponsored appraisal projects such as throughout the Adirondack Park, on hundreds of environmental Brownfield (former large scale industrial sites); the valuation determined by this appraiser was thought to be fair; in addition it was felt that no other purchaser would be likely to consider that appraised value simply because of the parcel special and unique utility to the District; a contract contingent upon alienation approval by the NYS Assembly and Senate, and with the governors approval was entered into on June 6, 2017 at a purchase price of \$148,000, (the appraised value). In connection with same a separate condition precedent to perfecting the sale was written into the contract, namely that the School District electors (ie resident voters) must affirmatively approve same at a mandatory referendum. A final set of conditions related to responsibility for demolition of an old dugout stand type building now used for storage, and disposal of any asbestos; that issue was resolved by a sharing of duties timed such that there would be no responsibility for same unless and until the contract contingencies had been resolved and closing was pending; at several times throughout the contract pendency the Board had considered and on several occasions adopted resolutions affirming the contract of sale. At this time attorney Primo asked again that same be approved and in conjunction with that approval a second resolution requesting a Home Rule determination approving the alienation of the Memorial Park premises as described by tax parcel number and acreage in such resolution following.

Primo last reminded the Board of the determination made at the annual organizational meeting that unless otherwise provided, the Action for SEQRA purposes was a Type II. This would also apply as to the Home Rule request following.

Motion to adopt the foregoing resolution was made by Trustee Pendergast, seconded by Trustee Musumeci; All Trustees and the Mayor voting Aye.

RESOLUTION

The **VILLAGE BOARD OF THE VILLAGE OF PHOENIX**, in the County of Oswego, State of New York, met in regular session at the Sweet Memorial Building in the Village of Phoenix, Oswego County located at the Sweet Memorial Building, Main St. Village of Phoenix, New York on the 5th day of June, 2018, at 7:00 p.m.

The meeting was called to order by Ryan Wood, Mayor and the following were present, namely:

Ryan Wood	Mayor
David Pendergast	Trustee
Paul Griser	Trustee
John Musumeci	Trustee

Absent: Caleb Sweet Trustee

Also Present: Roxanne Demo, Village Clerk-Treasurer
Jim Lynch, Village Administrator
Steven J. Primo, Village Attorney

The following resolutions were moved, seconded and adopted:

WHEREAS, The Village of Phoenix Board of Trustees ("Village Board") pursuant to a proposed conditional/contingent contract of sale between the Village of Phoenix ("Village") and the Phoenix Central School District ("PCSD") desires and proposes for PCSD to acquire in fee all right title and interest in and to such lands, as improved, consisting of 11.96+/- acres identified as tax parcel #303.16-02-05 located within the Village; the PCSD has conditionally agreed to and is desirous of accepting and acquiring such lands and appurtenances rights and interest from Village; the aforementioned premises subject hereof consisting of former parkland property utilized for limited public purposes as the "Memorial Park" however for several decades largely in substantial disrepair and non-use and during such period the memorial improvements having been relocated upon not for profit owned premises maintained by local VFW Post 5540; and

WHEREAS, this transfer requires a special act of the State Legislature to authorize such transfer; and therefore,

NOW, on recommendation of the Village of Phoenix Board, be it hereby:

RESOLVED, that pursuant to the Constitution of the State of New York, the Village of Phoenix Board of Trustees hereby requests the NYS Assembly and Senate and New York State Governor support A10030-B and S7166-C, relating to authorizing the Village of Phoenix to discontinue its use of certain parklands, specifically those aforementioned, and be it further;

RESOLVED, that the Village Clerk is directed to provide copies of this Resolution to State Senator Patty Ritchie and Assemblyman William Barclay.

Upon motion made by Mayor Ryan Wood and seconded by Trustee Griser, the foregoing resolution was put to a roll call vote, which resulted as follows:

Ryan Wood, Mayor	Aye/yes
Paul Griser, Trustee	Aye/yes
John Musumeci, Trustee	Aye/yes
David Pendergast, Trustee	Aye/yes
Caleb Sweet, Trustee	Absent

Resolution was duly adopted on the 5th day of June 2018.

CERTIFICATION

I, the undersigned, Clerk-Treasurer of the Village of Phoenix, Oswego County, New York, do hereby certify: that the above is a true copy of the original resolution proposed and adopted at a regularly scheduled meeting of the Village of Phoenix Board of Trustees held on June 5, 2018.

In witness thereof, I have hereunto set my hand and seal of the Village of Phoenix, New York on the 5th day of June 2018.

Roxanne Demo, Clerk-Treasurer

TRANSFER OF VILLAGE PROPERTY TO KLINE

Primo indicated that previously the board had considered a resolution to compensate Kline for the loss of any well rights, if any existed at all; the facts and history were complicated and not wholly clear adjacent to certain lands owned by Kline at Kline Rd. water works a Village owned undeveloped parcel remained of nominal value, in fact arguably of no or negative value as abandoned water infrastructure and a structurally compromised building remains on the premises thereby exposing the Village to potential liability claims and damages since the Village no longer maintains, inspects or otherwise practices any risk management measures relating to same and while not developable in any significant way as is, with substantial clearing, grading and ensuring same is not prohibited or restricted in any way due to (for instance) wetlands or endangered species, the same may have minimal value to Kline due to the proximity of same to his lands, and that Mr. Kline has agreed, in conjunction with his taking title and legal possession to release and hold harmless the Village for and from any claims, liabilities, injuries or damages that may arise from the owners acts or omissions upon or regarding the premises; the failure to carry liability insurance in reasonable amounts (ie the same as to limits and coverages as on his other adjacent parcel, a formal determination needs to be made that the land is surplus and no longer need for municipal purposes. Further that by taking title under the agreement aforementioned and relieving the Village of a potential liability, and one which Kline should not be exposed or as exposed to because of his proximity to the parcel subject hereof. Motion for approval of resolution for Kline property and directing the transfer by deed with the release provision stated was made by Trustee Musumeci, seconded by Trustee Pendergast. All ayes.

ZONING MAP AMENDMENT; SLOCUM NYS RTE 264

Mayor Wood said he wants to continue with the zone change on Co. Rt. 264 for the property that Phil Slocum is purchasing and the proposed development. Attorney Primo acknowledged that the Developer had expressed some dissatisfaction with the speed of the process and acknowledged that in one respect he was correct because of our having to deal with the lack of a planning board however he also noted that he was aware no fees had yet been paid nor had the developers proposal related to the restrictive covenant without which no local law could be considered; in any event however some additional documents had been delivered on the 29th of May and based thereon he felt we may consider the application substantially complete and based on certain conditions the Board could consider scheduling the public hearing; as such Primo articulated the following as a motion:

A Public Hearing to be scheduled by the Board of Trustees of the Village of Phoenix for the 19th day of June 2018, at 6:45P.M. at the Municipal Building (Sweet Memorial Building) found at 455 Main St. Phoenix, New York 13135 for the purpose of considering the enactment of proposed Local Law No. 5 for the year 2018 for the Village of Phoenix relating to the amendment of Chapter 205 of the Village of Phoenix Municipal Code entitled “Zoning” Sections 205-4 and 205-5 providing specifically for amendment of the existing Zoning Map so as to change the zoning classification of the parcel identified as Tax Parcel #303.12-01-09, from Residential (R-1/2) to Business (B), said parcel believed to be owned by one Mildred Young as indicated by Deed recorded at Book 507 page 64 at the office of the Oswego County Clerk. Such owner of record or legal representative is/are the named or acting sellers to the Developer as contract purchaser of the premises under executory contract, such Developer (Mr. Slocum) requesting the map amendment representing by contract he has written authority and consent to seek the map amendment described herein and such other approvals and permits as required to allow construction and operation of the proposed project as he has described. Primo then went back to the earlier discussion of his concerns and accordingly listed several actions the Board need take however also listing a number of other conditions precedent to moving things ahead within the developers control as listed below; first however he reminded the Board of the issue respecting that the Planning Board by Code usually had site plan authority however we have not had any planning board members terms renew for several years; as a compromise position, and in deference to Mr. Johst who had for many years served as chair it was determined that an informal referral be made to him as an interim planning board chair or special advisor until such time as the new village ZBA is formed with plenary advisory powers in addition to the usual variance and interpretation authority on appeal or via original jurisdiction where provided by Code;

As a result of the foregoing, Primo asked that a referral to the interim (ZBA/PB?) Chair, as assisting consultant be affirmed for an advisory opinion as may or may not at present be required under Sections 205 J(4)of the Village Code. The advisory opinion shall be rendered in writing and delivered back to the Village Board for consideration within 20 days of referral. Same to be clear shall be advisory in nature only as the Village Code does not even provide for an advisory opinion on a map amendment, and it should be stated for the record that his advice has been sought due to his long experience with the Village Planning Board which no longer exists as a

matter of law due to the expiration of all members terms.

Likewise as a separate condition the Town of Schroepel Supervisor/Town Clerk or other person named in the statute if any, shall be served with a copy of such Application and related documents the same needing to occur per statute at least ten days prior to the public hearing (see further on this issue below),

Last, on the issue of referrals, referral to the Oswego County Planning Board is required under General Municipal Law Sections 239-m and possibly -n if the project developers plan was or is to include the map amendment subject hereof, together with a minor subdivision, and site plan approval for the 4-5 unit retail or business/commercial structure with appurtenant improvements; however technically the zoning amendment needs to come first and as mentioned now several times, the restriction is to limit certain uses otherwise permitted in the zoning district for which the map amendment is sought (B- Business) (this has been requested from the first meeting I had with the Developer and we do understand same is to be proposed by the Developer and then discussed/negotiated with the Village Board; the necessity was that given the expansive listing of potential commercial and similar uses permitted in the Business district, our only such district other than the confined canal commercial district, it has been urged that this issue be straightened out and discussed sooner rather than later and in any event well before the public hearing subject hereof; as a legal requirement we cannot have a pending local law on file for public review without all the important language being in there- and further, I have reviewed the code and honestly believed there is a reasonable resolution and it does not involve excluding many uses. The holding and taking of testimony at the hearing is not a given. We have nothing to have a hearing on if the law and restriction can't be agreed upon.

As to SEQRA, the action, inclusive of the subdivision and site plan approvals required appear as an Unlisted rather than Type One Action under the State Environmental Quality Review Act; nevertheless the Developer has been required to complete and file together with all other application documents and requirements a long form EAF document and to advise or propose as to its intentions or request of the Lead Agency in this regard; The Village Board is to assume Lead Agency for purposes of SEQRA review, at the latest prior to or immediately following the public hearing subject hereof. Please note a decision in favor of or against, the applicants request, and including any applicable conditions may or may not be made following close of the public hearing, including any adjourned date, based upon the status of completion relative to the referrals mentioned and legal/engineering review of any submitted or required to be submitted application requirements not then or earlier waived by the Planning Board or Village Board.

As earlier indicated, it may be that most if not all of the documents required by Village Code, in light of the May 29 submission may in fact be complete. That said it is incumbent upon the Developer or his engineer to review both the Village Code and Oswego Counties revised GML 239 review cover sheet and instructions; any documentation required by or for completion of their cover sheet, basically an EAF itself; the cover sheet will be completed based on information the developer provides. Where there is no answer then an "unknown", "not provided", or "N/A" shall be inserted by the Village.

The Developer shall provide documentary conclusive evidence as to the authority to seek the

zoning amendment and other approvals sought. The signed authorization should make specific reference describing what it is that is being authorized.

All application, filing, publication and professional fees escrows must be paid in full not less than five (5) days prior to the public hearing. The executive law/non-collusion affidavit and professional fees agreement for reimbursement included in the application package must be executed and delivered to the Village not later than five days prior to the public hearing; As to the latter, within the blank space for a dollar amount on the agreement you may enter either the total of engineering/legal on deposit to that date of signature, however no application or publication fess, nor any other charges due the Village shall be included;

This Resolution, approved this June 5, 2018 authorizes and conditions the above referrals and scheduling of public hearing and such other included requirements are conditions precedent to the public hearing reserved by the Village.

The proposed Local Law has been prepared but for the restriction, and shall be kept on file at the Office of the Village Clerk for inspection and review upon the usual terms.

Motion was made by Trustee Pendergast to set a public hearing for zone change on June 19, 2018 at 6:45pm, seconded Trustee Musumeci. All ayes.

WINDSTREAM PUBLIC SERVICE COMMISSION

Primo said he needs approval from the board for filing a petition with the public service commission seeking a ruling that the fees claimed are not owed and perhaps cancelling all liability under the contract. This is related to the Windstream office account and their billing practices since inception with the Village, the application I believe needs to be signed by the Mayor. Motion to approve was made by Trustee Pendergast, seconded by Trustee Musumeci. All ayes.

TELECOMMUNICATIONS LOCAL LAW

Motion was made by Trustee Pendergast to set a public hearing for proposed local law #6 of 2018; the 5g telecommunications local law and moratorium relating to larger scale facilities on July 17, 2018 at 6:55pm, seconded by Trustee Griser. All ayes.

Abstract

Mayor Ryan Wood asked if anyone had any questions or concerns with Abstract #7 dated June 5, 2018 in the amount of \$294,186.21. Trustee Griser made the motion to approve, general fund vouchers 178-241; water fund vouchers 179-240; sewer fund vouchers 179-238; water/sewer capital fund vouchers 202-203; library fund vouchers 45-59: and trust and agency fund vouchers 49-59, seconded by Trustee Musumeci. All ayes.

Old Business

Motion to approve meeting minutes of May 15, 2018 was made by Trustee Musumeci, seconded by Trustee Griser. All ayes.

Motion to approve public hearing minutes of May 30, 2018 was made by Trustee Griser, seconded by Trustee Musumeci. All ayes.

Motion to approve meeting minutes of April 3, 2018 was made by Trustee Pendergast, seconded by Trustee Musumeci. All ayes.

Public Comments

No public comments.

Motion was made by Trustee Pendergast to adjourn the meeting at 8:28pm seconded by Trustee Musumeci. All ayes.

Respectfully submitted,

Roxanne Demo
Village of Phoenix
Clerk/Treasurer