

REGULAR TOWN BOARD MEETING
January 18, 2022

PRESENT:

Supervisor Richard A. Purol
Councilman Robert Penharlow
Councilman Henry Walldorff
Councilman Juan Pagan
Councilman Jay Bishop (via zoom)

OTHERS PRESENT: Town Clerk, Rebecca Yacklon, Deputy Clerk, Kyle Coughlin, Attorney Jeffrey Passafaro, Sue Hazelton, Gary Hazelton, Joe Muscato, Barbara Warren, John Jay Warren, Carter Town, Bob Price (via zoom), Phil Leone, Lisa Briggs (via zoom), Jerry Dziduch, Allison Lang (via zoom), John Jay Warren IV (via zoom), Shari Miller (via zoom), Jennifer Friedman (via zoom), Scott Friedman (via zoom), Irene Strychalski, and Anthony Dolce from the Observer.

Supervisor Purol opened the regular Town Board meeting up at 6:35 pm with the pledge to the flag.

APPROVAL OF REGULAR MEETING MINUTES DECEMBER 21, 2021

Councilman Walldorff made a motion to approve the Regular meeting minutes of December 21, 2021. The motion was seconded by Councilman Pagan and carried.

APPROVAL OF SOLAR AMMENDMENT PUBLIC HEARING MINUTES DECEMBER 21, 2021

Councilman Pagan made a motion to approve meeting minutes for the public hearing for the Solar Amendment from December 21, 2021. The motion was seconded by Councilman Penharlow and carried.

APPROVAL OF BATTERY STORAGE PUBLIC HEARING MINUTES DECEMBER 21, 2021

Councilman Penharlow made a motion to approve public hearing meeting minutes for the Battery Solar law from December 21, 2021. The motion was seconded by Councilman Walldorff and carried.

APPROVAL OF ORGANIZATIONAL MEETING MINUTES JANUARY 4, 2021

Councilman Pagan made a motion to approve the organizational meeting minutes from January 4, 2022. The motion was seconded by Councilman Walldorff and carried.

ABSTRACT OF AUDITED VOUCHERS

Councilman Walldorff made a motion to approve the abstract of audited vouchers as presented by the Town Clerk on the January 18, 2022. The motion was seconded by Councilman Pagan and carried.

General Fund	\$6,034.57
Highway Fund	\$4,974.18
ELRSD	\$214.76
Bennett Improvement	\$44,439.88

OPEN COMMENTS

Phil Leone of 5208 Woodlands stated that in late November their attorney had sent a letter requesting a zoning board of appeals review of the code enforcement officers ruling on the VRBO.

Mr. Leone asked what's the procedure to get this meeting scheduled? It's been over two months and they hadn't heard anything on a date yet.

Supervisor Purol had informed them that they had never done an interpretation before and this is all new to them. The Zoning Board is looking for legal advice and proper procedure on the matter.

Mr. Leone then asked if the Town is worried about any litigations on this VRBO issue. He also stated that if the Town was to rule not in favor of the VRBO, the VRBO owner will be angry. She works for an attorney and if she loses, she will most likely proceed with an article 78 proceeding.

Mr. Leone had also told the board if you don't proceed and don't enforce the code on how it is written in the zoning book, that all the residents in that will put our money together like they already have and proceed with an article 78 proceeding ourselves. He stated that they are only asking that the code be followed on how its written.

Phil Leone also received an email from their neighbor Dave Maternowski of 5144 W. Shorewood Dr. which he read to the board on his behalf.

"Why change something that decreases values of the homes of people who voted for you?

I had an official Home Appraisal last week from an accredited firm. I asked specifically if VRBO's could affect housing values in a residential district. He stated a resounding "Yes" and he researches Google for the amount of these "business" before he steps foot on a customer's property. An abundance of VRBO housing will negatively impact a value of a residential house. Period.

Amazing, isn't it. Please share. The Town Board is supposed to represent its constituents. Why in heavens name are they pushing for something that will lower their constituents housing values. That should be publicly answered."

Jay Warren of 5182 Woodlands

Jay Warren stated that he was there to talk about the vacation rentals in the Town of Dunkirk, in a R-1 district. There was a question about what the interpretation was of the code, that it wasn't clear and it was ambiguous. He explained that several residents, including our attorney our looked at the code and it clearly states on page 124 under Interpretation of Permitted Uses- When a use is not specifically listed as a "Permitted Use", "Permitted Use with Site Plan Review" or "Permitted Use with Special Permit" within any zoning district, it shall be assumed to be a prohibited use unless it is determined, in a written decision by the Zoning Board of Appeals. He stated that he did not understand why they are even here month after month, if that's what the code states. He then asked what part of the code is ambiguous? He told the board that some people are saying that the board is going to change the zoning code and allow vacation rentals in an R-1 district. He said that he hoped that was not true because they are already permitted in an R-2 district.

He then asked if it was true that the Town Board is considering allowing vacation rentals in an R-1 district?

Supervisor Purol informed him that we have not decided on anything at this point.

Mr. Warren then asked if this was going to be considered in the Town?

Supervisor Purol said that it was being considered.

Mr. Warren mentioned that the Board knows that this group stands against that and would hope that they do not change that.

Sue Hazelton 5178 Woodlands Dr. (Ref. 5184 Woodlands Dr.)

"Private means a place of seclusion which we all enjoy. Why change the character of our properties our neighborhoods to satisfy one person that doesn't even live here in Woodlands. Resides in another county and also a business partner which would make 5184 a business also living in a different county. This is not a legal or permanent address for these people. Talk about vacant

abandoned property! Some make bad decisions without checking first with the town's codes. So, someone did not do their homework. Were their permits issued for electrical and plumbing-etc.? There was a discussion at last meeting about Shorewood Country Club being on Rt.5 which is not a private road. You can't compare a state road such as Rt. 5 to Woodlands and all other private roads. I must have missed something. And for lodging houses: a temporary place to stay, a resort, hotel, motel, Inn, cabin, or cottage. Bed & Breakfast: an establishment as an Inn, Hotel, private home offering lodging and breakfast for one inclusive price. No matter what name you use, they all mean the same. These VRBO's, party houses and such are not necessary for the town to survive or prosper. So, it seems all the above does not fit into a R-1 district. We know Woodlands is not the only private road involved. Included there is Linwood, Farmlane, Bayreef and Edgewood. Talking with residents from other areas no one is happy with these VRBO's. Yes, folks lets depreciate the value of our homes and that includes the whole town with these Party houses. Thankyou."

Irene Strychalski had stated that a mile down the road is Van Burren Bay and Van Burren Point and they all have these vacation homes you can rent for longer times so why do they feel they have to come into the R-1 district when they can go a mile down the road?

Barbara Warren of 5182 Woodlands

Stated that she would like to explain how this VRBO has changed what they have had in their neighborhood for so many years. She stated that It was not just a few people in the neighborhood, its everyone in our neighborhood. She said that her and her husband had dinner with friends that live on the East side of Town. These friends live in the R1 in the East Town, which is similar to the Woodlands area. She stated that they explained our situation to them and the first thing they said was how that's not allowed in an R-1 district. It shouldn't be allowed. She then explained that it doesn't matter if you're on the East side or west side of Dunkirk. It's changed life as they know it. She showed the board a beautiful picture of the sunset tonight and stated that it was a reminder not only of the peaceful quiet neighborhood they all enjoyed, it was also a reminder that in a short amount of time that if they don't get some help the house parties will start again. She thanked the board.

Gary Hazelton of 5178 Woodlands

"Ever since the Observer printed our story about the 5184-problem rental with its picture especially the closeness of the rental to the neighbor's home who has owned for 40 years a lot of towns people have taken notice of this problem. We have all received calls and emails supporting us in our fight. Seems like every time I go to Tops or Walmart someone asks me about this. Why is it taking so long to decide that's illegal in a R-1 zoning? They certainly wouldn't want one next to them. Now every time a home comes up for sale everyone will wonder if some out of towners will buy it and turn it into a VRBO because of problem renters and parties along with their dogs, extra traffic on these private roads that are narrow. I have said it all along these things will lower the value of everyone's homes on the street which now can be a problem and will make more problems for the town. These add no value to the town only to the owners who live somewhere else. These things can ruin neighborhoods people lived in for years. I'm sure the town doesn't want yards full of no trespassing signs for decoration or fences. We all know how well those things turn out. Just today their driveway plow man left piles of snow in the road after the regular plow man had already cleaned all the streets leaving dangerous conditions. Thank you."

Allison Lang of 5192 Woodlands

She had a few questions for the Board: She stated that when she spoke to Ryan Mourer at the beginning of the summer about the VRBO's and how they are enforced he had told her that there are so many VRBO's and Airbnb's in Chautauqua County that they can't be policed. She then said as far as making sure the tax revenue is collected her question is, if you do allow this how are you going to guarantee that you know every short-term rental property is registered with the Town and that they are paying the appropriate fees and taxes? She explained that in South Carolina there is a huge lawsuit in Greenville because VRBO's and Airbnb's properties aren't paying the proper fees. She then asked if you are allowing a business to operate in an R-1 district, how would you know that they are paying the correct taxes? You may not have even known about this VRBO in our neighborhood if our neighbors wouldn't have come to you about this. She also went on to ask if the Town or Zoning Enforcement Officer is getting any pressure from VRBO's itself or Expedia to allow this short-term rental in an R-1 district.

Supervisor Purol had stated we have not received anything like that and as far as Ryan he is not here tonight, and I can't answer for him.

Ms. Land had one more thing she wanted to add, short-term rentals bring a private neighborhood nuisance. A nuisance is when somebody or someone causes interference to the way that you enjoy your own property whether it is by a lot of parking, excessive noise, or feeling unsafe. She stated that knowing what a residential neighborhood should be she does not feel like this is something they want to introduce into the neighborhood. She stated If it is something like a lodging house it should be in an R-2 district. It should not be allowed in an R-1 district.

Jerry Dziduch of 5158 West Shorewood Dr.

He stated they were back again and that they are going to keep coming back. He stated they don't want this. He explained that he believes the code is black and white. Not ambiguous. He said he didn't think the board wants to hear this all the time but they have to do what they have to do to protect their neighborhood. He said that they want to be good town people. They voted for all of the Town Officials. They help the community. He explained that they would be back at the next meeting and keep coming until they get the answers they are looking for.

John Jay Warren IV

Mr. Warren stated that he wanted to reiterate some of the questions he had already asked. He felt it was important to reiterate the importance of them. As stated earlier he thought it appeared that neither the board nor the town enforcement officer wants to support the current code that exists which was puzzling. In theory, he stated that both the board and the code enforcement officer are pointing fingers at each other. He stated that it was his understanding that it starts with the zoning enforcement officer, he would like to understand from Ryan Mourer, why he feels the code is vague and what his point of reference to support that. Saying vague is not an acceptable answer, specific reasons should be pointed out for all to understand. To either party independently or collectively why they think this is vague because it's not. He stated that it clearly states a single family. Then it goes on to ambiguous language its not clear it shouldn't be allowed. So that should be the first question for the Town Board as to why they don't think its clear. He stated that he felt that's not an appropriate response two and a half months into this.

Second Question: It was his understanding at last month's zoning committee meeting it was pointed out that Mr. Mourer was adamant in telling the last zoning consultant he must put language in the new zoning laws that allowed for short term vacation rentals in an R-1 district. Could that position be clarified to his reasoning why?

Third Question: Asking as importance of full disclosure and public record, that each member of the

board should state whether they have a current vested interest (either presently or plan to within the next 12 months) in vacation rentals in R-1 districts, including the Town code enforcement officer?

Fourth Question: has the town engaged with local law enforcement yet about heightened demand for presence and response times should this vacation rental continue to be allowed? What type of response was provided, and can they meet the need/demand?

Fifth Question: What is the town's risk mitigation strategy should something happen, bodily injury or property damage, as a result of vacation rentals? For example, should a vacation rental property's insurance not properly respond, should liability make its way back to the town for not having upholding its responsibility in protecting its constituents. I would say likely the town should be prepared to step in.

Sixth Question: Has the board evaluated potential lost tax revenue from depreciating home values as a result of adding short term vacation rentals into R-1? Does that lost revenue exceed whatever revenue benefits you think may be achieved by short term renters?

In regard to Allison Lang's question on the parenting company Expedia or Airbnb have the owners of 5184 brought these legal actions to the Town separately?

Allison Lang had asked the board when will they get answers to the questions they have been asking over and over again at every meeting?

Supervisor Purol had informed Allison that probably when the Zoning Board hears the interpretation. Sue Hazelton had asked how the zoning board was going to see their point of view and if they were going to read all their letters that were submitted?

Supervisor Purol stated that it is up to the Zoning Board to see how they are going to handle it. He also stated that there is a couple of different ways on how they are going to handle this, and it is all up to the Zoning Board.

Gerry Dziduch asked the board since they asked for the appeal in November, why was it taking so long to schedule? They are talking February before anything starts. Why is this so difficult?

Supervisor Purol had told Gerry that this is how it is all set up. They are following what they have been instructed to do. I don't agree with how long the process has taken but it was out of his hands.

Irene Strychalski wanted to know if the zoning board doesn't read their letters and isn't at the meetings to listen to their concerns, how are they going to know how they feel?

Supervisor Purol informed Irene that everything that is brought up at the meetings and all letters submitted are included word for word in the minutes. He stated that the clerks work for days on doing the minutes to make sure everything is included.

Barbara Warren stated she would like to thank everyone in this town that has taken the time to listen to them and try to understand what they are going through as residents of the Woodlands neighborhood. She explained that she attended the zoning board meetings which she doesn't have much experience in, but it seems very clear that a discussion between a bed and breakfast facility with an owner living on site versus a lodging house with transient people coming in and out all the time are very different. She stated that there are people coming three to four days with three to four cars at a time. She stated that they are the people who live there and pay our taxes and have to sit in their houses while the party house keeps going on. She explained that the bedroom window is right by their deck. It's been very frightening. She stated that she just asks that all everyone consider what

it's like for a neighborhood that's been turned upside down by a situation that's like a hotel or business. She stated that they pay taxes to be in a beautiful neighborhood in Woodlands. She explained that they spent their whole lives making their neighborhood beautiful.

Allison Lang commented on how they have made their point very clear and would like to thank the office for providing the zoom links and for taking all the notes at every meeting and for everything we do for the town.

TOWN CLERK REPORT (December 2021)

Clerk Fees \$260.00

Zoning Fees \$1675.00

Dog Licenses \$34.00

Total amount transferred to Supervisor Purol \$1,969.00

JUSTICE REPORT (DECEMBER 2021)

Total number of cases **231**

TOTAL FINES and surcharges submitted to the Town Supervisor **\$24,019.00**

JUSTICE REPORT (END OF YEAR 2021)

Total number of cases **2648**

TOTAL FINES and surcharges submitted to the Town Supervisor for 2021 **\$28,7015.00**

BOARD MEMBER & COMMITTEE REPORTS

No reports available.

HIGHWAY SUPERINTENDENT REPORT

Received Chips money & Winter Recovery money from the state in the total amount of \$41,192.81.

ZONING/CODE ENFORCEMENT OFFICER REPORT (Ryan Mourer)

- Permit for roof issued – Moorewood Dr., Bennett Rd. Ext., and Plaza 59.
- Home on Wilbur Rd. – Framing inspection completed, and home is ready for interior wall mechanics.
- Request came to consider vacant land at Lakeside Park to be used to expand
- Cold Storage construction continuing
- Dental construction underground is being worked on. Most framing completed.
- CEO annual training for January 2022 moved to April 2022 due to covid.
- Will have ZBA hearing this month for signage for North Chautauqua Dental Office on Bennett Rd.

ATTORNEY REPORT

There are two active tax cases that Attorney Passafaro and Assessor Jeanne Ebersole are working on, both are commercial in nature.

SUPERVISOR REPORT

Supervisor Purol announced that Athenex will be merging with ImmunityBio. He stated that while they told him before it was in the newspaper, he was not intimately involved in this situation and was made aware rather last minute. He stated his concerns with this situation was that the Town has

consistently not gotten the attention they deserve for this. Athenex's location is constantly referred to as "outside the City of Dunkirk's limits" and not the Town of Dunkirk.

Councilman Bishop emphasized what Supervisor Purol said and stated he was upset that the newspaper and news station talked to the Mayor of the City of Dunkirk, rather than the Town Supervisor.

Supervisor Purol also explained to Board Members that there is an opportunity to go in with Town of Sheridan for an agreement with a new piece of equipment. After the meeting he stated he would give all Board members material to review, on costs of doing this. He stated that he just threw out there that he thought 20% of the cost could be potentially covered by the town. He explained this was something they will look into further.

CORRESPONDENCE

None received.

COURT AUDIT

RESOLUTION OF THE TOWN BOARD TOWN OF DUNKIRK

At a Regular Meeting of the Town Board of the Town of Dunkirk, held at the Town Hall,

4737 Willow Road, Town of Dunkirk, New York on the eighteenth of January 2022:

On motion of Councilman Walldorf, a motion was made to provide the justice court records for the year 2019 and 2020 to the Unified Court System's Internal Audit Office effective January eighteenth 2022. The motion was seconded by Councilman Pagan and carried.

I, Rebecca Yacklon, the undersigned Clerk of the TOWN OF DUNKIRK, do hereby certify that I have compared the foregoing copy of this RESOLUTION of the TOWN OF DUNKIRK with the original thereof on file in my office and duly adopted by said Board on the 18th of January, 2022 and that the same is a true and correct copy of such RESOLUTION whereof, I have hereunto set my hand and affixed the seal of said TOWN this 18th day of January 2022.

Rebecca Yacklon, Deputy Town Clerk
TOWN OF DUNKIRK

Supervisor Purol informed the Board that the court will also need an audit for 2021. A motion was made by Councilman Walldorff to approve an audit for the Justice court for the year 2021. The motion was seconded by Councilman Pagan and carried.

LWRP

Supervisor Purol contacted Matt Bourke with Chautauqua County to see if there is anything the Town Board needs to do, to continue to be apart of this program. He did not answer, will update the Board at a later date.

SHOREWOOD WATER DISTRICT

Supervisor Purol reminded Board members that they designated the ARPA Funds to go towards Shorewood Water District at the last meeting. He explained this will help bring down the total loan. Supervisor Purol asked Attorney Passafaro what the next step was for the Shorewood Water District.

Attorney Passafaro informed the Board that they needed to proceed with a public hearing for the 202-b proceedings.

The Board agreed to schedule a public hearing for February 16, 2021 at 6:15 p.m.

Attorney Passafaro also informed the Town Board that they needed to retain bond council and he recommended John Alessi from Hodgson and Russ. A motion was made by Councilman Juan to retain bond council. The motion was seconded by Councilman Penharlow and carried.

**AT A REGULAR MEETING OF
THE TOWN BOARD OF THE TOWN
OF DUNKIRK, COUNTY OF
CHAUTAUQUA, NEW YORK, held at
the Town Hall in said Town on the 18th
day of January, 2022.**

PRESENT: Richard Purol, Supervisor

TOWN BOARD:

**Juan Pagan, Councilman
Henry Walldorff, Councilman
Dr. G. Jay Bishop, Councilman
Robert Penharlow, Councilman**

**In the Matter of the Increase and Improvement
Of Facilities in the Town of Dunkirk, Shorewood
Water District, Town of Dunkirk, County of Chautauqua,
State of New York
Under Section 202-b of the Town Law**

**ORDER CALLING PUBLIC HEARING
TO BE HELD FEBRUARY 15, 2022
At 6:15 PM.**

WHEREAS, the Town Board of the Town of Dunkirk, in the County of Chautauqua, New York, as the governing body of Shorewood Water District, requested and obtained from CPL, Licensed Engineers, licensed in the State of New York, to prepare a preliminary map, plan, and report for the increase and improvement of facilities of the District consisting of the construction of approximately 12,900 lineal feet of 8-inch water main to replace existing water main, which has deteriorated over the years; and including lands or rights in land, furnishings, equipment, machinery, and apparatus required

therefore; and pursuant to the direction of the Town, the Engineers have completed and filed with the Town Board such map, plan, and report, dated April 2021 for said improvement of facilities, and have estimated the maximum cost thereof to be Two Million, One Hundred, Ninety-Five Thousand (\$2,195,000.) Dollars, which amount shall be raised by levy and assessment against the lands and properties located in said water district:

NOW THEREFORE, be it

ORDERED that a Public Hearing be held by the Town Board of the Town of Dunkirk at the Town Hall, 4737 Willow Road, Dunkirk, New York 14048, on the 15th day of February, 2022 at 6:15 p.m., to consider said increase and improvement of facilities of the district, and to hear all persons interested in the subject thereof concerning the same, and for such other and further action on the part of the Town Board with relation thereto as may be required by law; and be it further

ORDERED that the Town Board shall also consider all matters relating to the State Environmental Quality Review Act at said Public Hearing as it pertains to said project; and be it further

ORDERED that the Town Clerk shall post and publish this Order calling for a Public Hearing as required by law.

January 19, 2022

**By Order of the Town Board of the
Town of Dunkirk**

COVID SUPPLIES

Supervisor Purol announced that the County delivered masks and test kits to the Town, and they are available for pick up on a first come first serve basis.

HANDBOOK AMENDMENT

Supervisor Purol told Board members that he wanted to look further into the handbook and potentially amending it to make an M.E.O part time but still being able to offer insurance. His idea was to potentially make one M.E.O's hours 20 rather than 40. He stated that this is something he would like board members to think about and work on.

ADJOURNMENT

With no further business, a motion was made by Councilman Pagan and seconded by Councilman Penharlow. The motion was carried unanimously, and the meeting was adjourned at 7:32 pm.

Respectfully submitted,

Rebecca Yacklon
Town Clerk