

BYRON TOWN BOARD MEETING

October 10, 2007

The Byron Town Board Meeting was called to order by Supervisor Glazier at 7:00 p.m. with the following people present:

Supervisor.....	Richard Glazier
Councilmen.....	Suzanne Fuller
	Steven Hohn
	Thomas Felton
	Craig Ferguson
Town Clerk.....	Debra Buck-Leaton
Zoning/Code Enforcement Officer.....	Robert Patterson
Highway Superintendent.....	George Heins

Absent:

Waste Water Dept.....Robert Cudney

Public:

Jim Cudney.....	Rte. 237, Byron
Bill and Barb Emerson.....	Terry Street, Byron
Mickey Truax.....	Swamp Road, Byron
David Chupp.....	Tripp Road, Byron
Jeanne Freeman.....	Hessenthaler Road, Byron
Jane and Bev Ivison.....	Townline Road, Byron
Tom Chapell.....	Swamp Road, Byron
Everett Roda.....	Rte. 237, Byron
Joyce Glazier.....	Byron Road, Byron
Pete Yasses.....	Rte. 237, Byron

Invited Guests:

Town Attorney Paul Boylan
Eric Wies, Clark Patterson Associates

PLEDGE TO THE FLAG:

Supervisor Glazier led the people in attendance in the Pledge of Allegiance.

MINUTES:

A **motion** was made by Councilman Hohn to approve the Byron Town Board Minutes of September 12, 2007 as writtten. The motion was seconded by Councilwoman Fuller and carried with the following vote:

Vote: Ayes: 5 Nays: 0

PLANNING BOARD REPORT – Councilwoman Fuller and Tom Felton:

- Land separations approved
- Completed review of zoning ordinance. The Planning Board will look at changes made before sending to the Town Board.

A **motion** was made by Councilman Hohn to approve the Planning Board Report as given. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

ZONING/CODE ENFORCEMENT OFFICER -Robert Patterson:

- Collected \$385.00 for the month of September in Zoning/Code Fees.
- Town Board should have revised zoning ordinance by beginning of next year.

A **motion** was made by Councilman Hohn to approve the Zoning/Code Enforcement Report as given. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

**LEGAL NOTICE
PUBLIC HEARING
TOWN OF BYRON**

NOTICE IS HEREBY given of a Public Hearing to be held by the Byron Town Board, 7028 Rte. 237, Byron, New York, on October 10, 2007 at 7:30 p.m. to consider a request for an amendment to the Certificate of Incorporation of the Byron Fire Department No. 1, Inc.

The proposed amended Certificate amends the purposes of the corporation to permit the corporation to operate as a tax exempt organization pursuant to §501(c)(3) of the Internal Revenue Code of 1986.

The original Certificate of Incorporation was filed with the Secretary of State of the State of New York on February 20, 1926 pursuant to the Membership Corporation Law.

The Byron Fire Department No. 1, Inc. provides services in a fire protection district in a portion or the whole of the Town of Byron.

The proposed amended Certificate of Incorporation is signed by Harold Austin, President and Donna VanSlyke, Secretary of the Byron Fire Department No. 1, Inc.

All persons interested in the proposed amendment change may attend and be heard. This notice is given pursuant to Section 404(f) of the Not-for-Profit Corporation law.

*By Order of the Byron Town Board
Debra Buck-Leaton, Town Clerk*

A **motion** was made by Councilman Hohn to open the Public Hearing at 7:41 p.m. The motion was seconded by Councilwoman Fuller and carried with the following vote:

Vote: Ayes: 5 Nays: 0

APPROVAL OF AMENDMENT TO CERTIFICATE OF INCORPORATION OF THE BYRON FIRE DEPARTMENT NO. 1, INC.

RESOLUTION #89:

Councilman Ferguson offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board, following a Public Hearing duly held pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York hereby approve the Certificate of Amendment to the Certificate of Incorporation of the Byron Fire Department No. 1, Inc. (“the Corporation”) amending the purposes of the Corporation to include the Corporation operating as a tax exempt organization pursuant to §501(c)(3) of the Internal Revenue Code.

Councilman Hohn seconded the resolution which was adopted by the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilwoman Fuller to close the Public Hearing at 7:50 p.m. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

HIGHWAY SUPERINTENDENT’S REPORT – George Heins:

SALT BARN:

·\$130,513.50 for expenses to date. Highway Superintendent George Heins and Kathy Spencer from Stuart Brown are reviewing the expenses to make sure they have included everything.

·New salt barn is now full of salt and sand

A **motion** was made by Councilman Ferguson to approve the Highway Superintendent’s Report as given. The motion was seconded by Councilman Hohn and carried with the following vote:

Vote: Ayes: 5 Nays: 0

WASTE WATER:

SEWER RESERVE DISCUSSION: (Town Attorney Paul Boylan)

·Must be done through operating and maintenance

·Two ways the Town Board can set up a sewer reserve: Capital Reserve Fund that would be undesignated and to take money out the Board would need a Permissive Referendum. Or Reserve Fund, in which an account would be set up for a specific purpose, but the Board would need a Permissive Referendum to put the money in.

SEWER PROTEST DETERMINATION:

·Mr. Peter Yasses filed a sewer unit protest form for 6957 Rte. 237, Tax Map No. 7-1-20 to have the number of sewer units reduced to zero from its current 1 unit.

Supervisor Glazier: He spoke with the assessor who said the two adjacent parcels at 6949 and 6957 Rte. 237 were always two parcels.

Councilwoman Fuller: She believes that when the sewer district was formed the occupants at 6957 Rte. 237 opted out of the sewer district because it was at the end of the line.

Supervisor Glazier: Residents never opted out of the sewer district.

Attorney Paul Boylan: No state law allowing residents to opt out of sewer district.

Supervisor Glazier: Responsibility of property owner to get hookup to property.

Councilman Felton: Is it possible to move the property out of the sewer district?

Attorney Paul Boylan: It's a complicated process, but it can be done.

Notification to bond issuers that removing collateral from sewer district is required. It would mean reducing the amount of security.

Councilman Hohn: Need to make sure the property meets code for square footage needed to have a private septic system.

Zoning/Code Enforcement Officer Bob Patterson: Should have the Health Department assess Mr. Yasses' current septic system to make sure it's appropriate for the lot size, and also assess the condition of the septic system.

· Mr. Yasses also filed a sewer unit protest form for 6860 Rte. 237, Tax Map No. 5-1-58 to have the number of sewer units reduced to 1 unit from its current 1.5 units.

Zoning/Code Enforcement Officer Bob Patterson: Based on square footage, not seating capacity. It was assigned maximum capacity of 45 at the time it opened.

The following is a copy of a letter received from Paul Boylan, Esq., Town of Byron attorney regarding Peter Yasses Sewer Assessments for 6957 Byron Holley Road and 6870 Byron Holley Road:

In response to Mr. Yasses' first objection:

- 1) *There is no question that the 6957 Byron-Holley Road is included in the geographical boundaries of the Sewer District and has been since its formation.*
- 2) *There is no question that the prior Town Board determined by resolution forming the Sewer District that all properties within the geographical boundaries of the Sewer District were benefited by the formation.*
- 3) *There is no question all properties benefited by the formation of the district were and are liable for the costs of constructing the district (See Opinion of State Compt 80-708).*
- 4) *There is further no question that the Town Board has "full authority to assess . . . district real property to pay for the construction costs of a . . . system" regardless of whether or not the property is connected to the system. Larkin v. Farrell (4th Dept. 1976) 52 AD2d 1069, 1070.*

5) *The fact that prior Town Boards mistakenly or otherwise declined or neglected to collect assessments from a property in the past does not prevent the current Town Board from exercising its right to assess a benefited property in the present. Therefore, there is no reason not to assess 6957 Byron Holley Road for its share of the costs of debt service attributable to the construction of the sewer system. However, since that property is not connected to the system, it may not be assessed for operation and maintenance expenses.*

In response to Mr. Yasses' second objection relating to 6860 Byron Holley Road, he states that "seating capacity" means the number of chairs "actually placed and being used within the establishment." His description of the result of using such a definition provides a perfect example of why such a method of determining the seating capacity is flawed and erroneous. Such a definition permits the occupant to change the "capacity" from day to day and, if he or she so chooses, to remove chairs from the establishment when the officer is counting them and add chairs after he leaves. "Capacity" is defined as follows:

- "ability to take in or hold"*
- "a containing space, area or volume"*
- "capability, possibility"*

Since those definitions speak to "possibilities", "ability" and "area", it is clear that in the context of the Sewer Ordinance, it is the area of the establishment and the ability or possibility of the number of occupants which controls the number of units to be assigned and not the ability of the occupant to move chairs in and out of the building.

*Sincerely,
Paul S. Boylan*

A **motion** was made by Councilwoman Fuller not to include the property located at 6957 Rte. 237 into debt service because it hasn't been for the last 20 years. The motion was seconded by Councilman Felton and defeated by the following vote:

Vote: Ayes: 2 Nays: 3

Poll of the Town Board:

Councilman Hohn	No
Councilman Ferguson	No
Supervisor Glazier	No
Councilwoman Fuller	Yes
Councilman Felton	Yes

A **motion** was made by Councilman Hohn and seconded by Councilman Ferguson to add the property located at 6957 Rte. 237 to the debt service. The motion was seconded by Councilman Ferguson and carried by the following vote:

Vote: Ayes: 3 Nays: 2

Poll of the Town Board:

Councilman Hohn	Yes
Councilman Ferguson	Yes
Supervisor Glazier	Yes

Councilwoman Fuller No
Councilman Felton No

A **motion** was made by Councilman Hohn to move the property located at 6860 Rte. 237 back to 1 unit from the current 1.5 units. The motion was seconded by Councilman Ferguson and defeated with the following vote:

Vote: Ayes: 2 Nays: 3

Poll of the Town Board:

Councilman Hohn Yes
Councilman Ferguson Yes
Supervisor Glazier No
Councilman Felton No
Councilwoman Fuller No

PARK COMMITTEE REPORT – Councilwoman Fuller and David Chupp:

- Interested in putting an ice rink at Fireman’s Park
- Would like to put a plaque in Fireman’s Park for Dib Nightingale
- Would like to repair dock at Trestle Park.
- They have not decided about a gate keeper for next year yet.
- CDs will be turned over to the Town for the Park Committee’s use.
- Sandbox and merry-go-round have been repaired.
- Six picnic tables have been burned or destroyed this year at Trestle Park and Fireman’s Park.

A **motion** was made by Councilman Ferguson to approve the Park Committee Report as given. The motion was seconded by Councilman Hohn and carried with the following vote:

Vote: Ayes: 5 Nays: 0

WATER DISTRICT NO. 2 UPDATE – Eric Wies:

REPORT ON RESTORATION PROGRESS:

- Randsco worked on punch list last week and this week.
- According to Randsco they are finished with restorations except for the Thruway embankment because DOT needs to be involved with procedure for restoration.
- Clark Patterson is meeting with contractor next week and contacting residents who have logged formal complaints.
- Actual quantities (hydrants, services, etc.) is completed and agreed upon.

N. BYRON ROAD UPDATE:

- Increase of \$2 a foot for pipe
- Remobilization costs increased
- Service line and hydrant costs increased.
- These increases have put the Town of Byron out of range to complete N. Byron Road. The first 6 homes on N. Byron Road could be connected without increase in budget. (\$25,000 for remaining 4 homes) Could be possible if the 4 residents committed personal funds to cost of connection.
- Randsco says they can’t lower prices any more.

·Remainder of \$14,000 could be used either for Cockram Road water district (would not lower unit cost), or could use it towards connecting Pumpkin Hill Veterinary Clinic. Eric Wies would recommend that the Board not commit funds to the Veterinary Clinic unless they commit to paying the cost of running line from where Water District No. 2 leaves off to the Veterinary Clinic.

·Should know by November 7th Board meeting what direction we should go.

PAYMENT TO STUART BROWN ASSOCIATES FOR 2004 SMALL CITIES GRANT ADMINISTRATION

RESOLUTION #90:

Councilman Felton offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board approves payment to Stuart I Brown Associates, Inc. in the amount of \$1,500.00 for administration of the 2004 Small Cities Grant Administration from May 1, 2007-August 24, 2007, with the understanding that Stuart Brown Associates will participate in the pending audit.

Councilman Hohn seconded the resolution which was adopted by the following vote:

Vote: Ayes: 5 Nays: 0

PAYMENT FOR LATERAL CONNECTION ASSISTANCE GRANTS:

RESOLUTION #91:

Councilman Felton offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board agrees to approve the payment of 4 vouchers totaling \$1,620.00 for lateral connections for Water District No. 2.

Councilwoman Fuller seconded the resolution which was adopted by the following vote:

Vote: Ayes: 5 Nays: 0

PAYMENT TO STUART BROWN ASSOCIATES FOR COCKRAM ROAD PRE-ELIGIBILITY DETERMINATION

RESOLUTION #92:

Councilman Felton offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board approves payment to Stuart I. Brown Associates, Inc. in the amount of \$1,700.00 for preparation of the Town of Byron's Pre-Eligibility Determination (PED) for improvements to serve the Cockram and Ivison Road areas.

Councilwoman Fuller seconded the resolution which was adopted by the following vote:

Vote: Ayes: 5 Nays: 0

REVIEW OF PROPOSED LOCAL LAW TO ASSIGN WATER UNITS:

·Draft of proposed Local Law reviewed by the Town Board, which was redrafted by the Water Committee.

·Section 3(a) and Section 4 B should read Zoning/Code Enforcement Officer.

Supervisor Glazier: Mr. Yasses has been hooked up to water since 2004 and has not been paying debt service. He will now be paying for debt service.

Peter Yasses: That's fine with him since he's been using the water.

Councilman Felton: Can the number of units be changed based on usage?

Supervisor Glazier: The customer can protest, but there is no basis for lowering units if little water is used.

Councilwoman Fuller: With regard to South Woods Campground, there is a campground in Conesus that charges 1 unit for every 10 campsites.

Attorney Paul Boylan: The Monroe County Water Authority reports usage to each town so units can be adjusted accordingly.

Attorney Paul Boylan: Need to have a Public Hearing on Water District No. 1 and No. 2 budgets in November.

A **motion** was made by Councilman Felton to hold a Public Hearing on November 7, 2007 at 7:30 p.m. to approve the proposed Local Law to Assign Water Units. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

ABSTRACTS

RESOLUTION #93:

Councilwoman Fuller offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board pay the following abstracts:

<u>Fund:</u>	<u>Abstract:</u>	<u>Vouchers:</u>	<u>Amount:</u>
General Fund	#10	#178 - #205	\$ 6,333.96
Highway Fund	#10	#146 - #157	\$18,272.51
Sewer Fund	#10	#96 - #105	\$ 4,190.76
Water District No. 2	#10	#24 - #25	\$18,687.36
General Fund	#PA-16	#70 - #78	\$ 2,168.12
General Fund	#PA-17	#79	\$ 50.00
Salt Barn Fund	#PA-3	#4 - #12	\$20,957.00
Sewer Fund	#PA-11	#15 - #16	\$ 876.87
Highway Fund	#PA-4	#	\$ 148.12

Councilman Felton seconded the resolution which was adopted by the following vote:

Vote: Ayes: 5 Nays: 0

TOWN CLERK'S REPORT:

Paid to the Town of Byron Park Committee.....	\$ 45.00
Paid to the Genesee County Treasurer for Dog Licenses.....	\$ 77.55
Paid to the NYS Ag and Markets for spay/neuter program.....	\$ 30.00
Paid to the New York State Environmental Conservation.....	\$4,689.56
Paid to the Town of Byron Supervisor.....	<u>\$3,857.69</u>
Total Disbursed for September 2007.....	<u>\$8,699.80</u>

A **motion** was made by Councilman Hohn to approve the Town Clerk's Report as given for September 2007. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

APPROVAL OF OFFICIAL UNDERTAKING FOR TAX COLLECTOR
RESOLUTION #94: Hohn/Felton

Approval of the Byron Town Board

We, the undersigned members of the Town Board of the Town of Byron, County of Genesee, State of New York, do hereby approve the attached undertaking or bond as to its form, manner of execution, amount and sufficiency thereof, and to the sureties named thereon. Said undertaking or bond shall be conditioned that the collector of the taxes shall well and truly keep, pay over and account for all moneys and property coming into her/his hands as such collector.

Witnessed this 10th day of October, 2007.

Supervisor Richard Glazier
Council Member Thomas Felton
Council Member Suzanne Fuller
Council Member Craig Ferguson
Council Member Steven Hohn

A copy of the Certificate of Insurance is attached.

EXECUTIVE SESSION:

A **motion** was made by Councilwoman Fuller to enter into Executive Session at 9:40 p.m. to discuss a personnel matter. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilman Hohn to come out of executive session at 10:10 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

FINANCIAL REPORT:

·Review of September 2007 financial report.

A **motion** was made by Councilwoman Fuller to approve the September 2007 Financial Report as given. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

OTHER BUSINESS:

**DISCUSSION REGARDING PURCHASE OF .35 ACRES ON RTE. 237
FROM JOHN STEFANIAK:**

·The Town would like to purchase a strip of land from John Stefaniak that is 50 foot wide by 304.85 foot deep to be used to continue the West Shore Trail.

·**Councilwoman Fuller** – Where did the Town come up with the \$6,000 figure for the Purchase Contract?

·**Supervisor Glazier** – It is based on previous offers by the Town for the property.

·**Councilwoman Fuller** - If the Town purchases .35 acres of the Stefaniak property, does this leave a commercial property remaining that does not conform to the zoning laws? How much money will it take away from the tax base?

·**Supervisor Glazier** – The assessed value is \$8,200 for the whole parcel. The Town only wants to purchase half of the parcel.

A **motion** was made by Councilman Felton to move forward with the purchase of .35 acres fronting on Route 237 and being 50’ wide by 304.85’ deep, owned by John Stefaniak, for \$6,000 plus the cost of a survey and closing costs. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

SPECIAL BUDGET MEETING:

A **motion** was made by Councilwoman Fuller to hold a Special Budget Meeting of the Town Board on October 17, 2007 at 7:00 p.m. The motion was seconded by Councilman Felton and carried with following vote:

Vote: Ayes: 5 Nays: 0

PUBLIC HEARING FOR CONTRACT FOR EMERGENCY SERVICES:

A **motion** was made by Councilman Hohn to hold a Public Hearing for the contract for emergency services for November 7, 2007 at 7:00 p.m. The motion was seconded by Councilwoman Fuller and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilman Hohn to change the Public Hearing on the Budget from 7:00 p.m. on November 7, 2007 to 8:00 p.m. on November 7, 2007. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

REQUEST FOR STREET LIGHT ON MILL POND ROAD:

·A request has been received by four residents on Mill Pond Road to add a street light in front of property owned by Carol Hoak on Mill Pond Road. Supervisor Glazier asked Highway Superintendent George Heins to look into whether a street light is needed.

SUPERVISOR’S REPORT:

John Durand has received the President’s Award for Volunteerism and Supervisor Glazier intends to write a letter of congratulations.

A **motion** was made by Councilman Hohn to accept the Supervisor’s Report as given. The motion was seconded by Councilwoman Fuller and carried with the following vote:

Vote: Ayes: 5 Nays: 0

ADJOURN:

A **motion** was made by Councilman Hohn to adjourn the Byron Town Board Meeting at 10:40 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

Respectfully Submitted,

Debra M. Buck-Leaton
Byron Town Clerk