

Town of Malone
Regular Board Meeting
September 24, 2014

A regular meeting of the Malone Town Board was held 6:00pm, Wednesday, September 24, 2014, preceded by a Public Hearing at 5:45pm, at the Malone Town Offices, 27 Airport Rd., Malone, NY.

PRESENT: Deputy Supervisor Paul Walbridge
Councilor Louise Taylor
Councilor John Sullivan
Councilor Mary Scharf

ABSENT: Supervisor Howard Maneely

ALSO PRESENT: Susan Hafter, Town Clerk
Andrea Stewart, Budget Officer
Lillian-Anderson Duffy, Town Attorney
Bruce Mallette, Superintendent of Highways

Jay Carter, Ogdensburg Mike Lewis, Ogdensburg Marina Kamara, Malone
Carl Sherwin, Malone **Olivia Pepe, Malone Telegram**

5:45 PM – Public Hearing - for a proposed Local Law which would establish a 6 month Moratorium on peddling or the transient sale of certain personal property

Deputy Supervisor Walbridge opened the hearing at 5:45pm. Proper Notice was provided and Clerk Hafter read the notice aloud. She reported that no one from the public had asked the clerk's office to see the text of the law.

Jay Carter and Mike Lewis from Ogdensburg addressed the Board, stating they have similar concerns in their community with tent sales. Mr. Lewis is a car dealer and said his business has been devastated by the transient tent sales held in nearby Oswegatchie. Both men commented negatively on the nature of the transients' business practices. They said that the related sales tax revenue is going out of the county in which the sales are held. Councilor Taylor asked if Ogdensburg is doing anything about this issue. The response was that the Town of Oswegatchie is waiting for other towns to back them up. Deputy Supervisor Walbridge said the Town of Malone has been front-runner in many issues and now takes the lead in the regulation of transient sales. He thanked the gentlemen for their comments. **At 6:00 pm**, with no further comments from the Public or Board Members, Deputy Supervisor Walbridge closed the Public Hearing.

CALL TO ORDER: Deputy Supervisor Walbridge called the meeting to order at 6:00pm, with a pledge to the flag.

MINUTES & REPORTS:

Motion – Councilor Taylor

Second – Councilor Sullivan

Resolved (#202 - 2014): to accept the minutes of the regular meeting of 08/20/2014 and the regular meeting of 09/10/2014 as presented and place on file.

Supervisor Maneely – Absent

Deputy Supervisor Walbridge – Abstained for minutes of 8/20; Aye for minutes of 9/10

Councilor Sullivan - Aye for minutes of 8/20; abstain for minutes of 9/10

Councilor Taylor - Aye for both

Councilor Scharf - Aye for minutes of 8/20; Abstain for minutes of 9/10

Minutes of 8/20/2014 – Carried 3-0

Minutes of 9/10/2014 – No quorum for vote

OLD BUSINESS:

Solar Project/FAA status

Town Attorney Anderson-Duffy received an appraisal prepared by Donald Coon for the value of the hangar roof-tops at, \$25,227.00 or \$1.47 per square foot of rentable area. Attorney Duffy has determined that 5% of the Town's total electric cost can be attributed to airport use, less than the \$605.00 that the solar panel contractor had come up with. Mr. Coon says a better way is to do an appraisal of the rental value of land; and he cited an example in Watertown, where land immediately adjacent to the airport has recently been sold with the value at \$.05 per square foot. He thinks that is a more valid determination. Attorney Duffy said she thinks that will give the Town a better probability of success with the FAA.

Councilor Sullivan went on record to say that this whole thing is totally ridiculous – to get an appraisal for a rooftop that has no value and pay \$900.00 for it. He said it is terrible that we are being led around by the FAA. Councilors Scharf and Deputy Supervisor Walbridge concurred. Budget Officer Stewart asked whether the inspector for the FAA is regional and noted Burlington, VT is also planning to install solar panels.

DEC Agent Sales Agreement – Clerk Hafter read aloud a report regarding the DEC Agent Sales Agreement and program, as follows:

I have continued to research and monitor issues regarding the DECAL’s Sales Agent Agreement and the new system the DEC has chosen. One thing I have found is that many Town Clerks, including Plattsburgh’s, have opted out due to problems with the computer program. Last week I called the Association of Towns. Lori Mithin-DeMasi directed me to Katie Hogdon, Assistant Counsel, as she is the person with whom Attorney Anderson-Duffy spoke. At first Ms. Hogdon thought I had called about the new DEC sales system itself, as she is well-aware the Town Clerk Agents are dealing with a host of with hardware and software problems. **Then we spoke about the contract itself: In regard to** the lack of a hold-harmless clause, she first she gave me the pat answer that I would be protected by the town. I told her I do not believe Malone taxpayers should be responsible for higher insurance rates, in the event of a DEC mistake. (The fact that they make mistakes has been clearly demonstrated with the unfolding of this new system). She agreed this is a valid point. **In regard to** the contract being between myself and the State, as a STATE agent: I asked why I should then be required to give the commission to the TOWN. Also, as their agent, why would they not cover my liability as they would for state employees? Ms. Hogdon was very interested in these issues. **In regard to** being directed to designate myself as Agent AND Assistant Agent, she was confused and surprised by that DEC requirement. **In regard to** Attorney Duffy’s assertion that the contract had been approved by “all the attorneys”, we know now that the AOT was not given a copy for review, and in fact had not seen it until Attorney Duffy sent it to them. “All the attorneys” must have been DEC attorneys; and why would they not approve the contract they wrote. **In regard to** the “one size fits all” contract; it gives huge retail stores, private sporting goods shops, and Town Clerks (appointed or elected) all the same terms & conditions, without consideration of vast differences among them. We agreed that the state does not always act in the best interest of the towns. In this case, the commissions collected by the agents (about 1% of sales) do not cover the cost of providing this service for the state. **Councilor Hogdon promised to bring all of my comments and concerns to Head Counsel Mithen and she promised a response.** As Town Clerk, I do have the option to choose **not** to be an Agent for the DEC. I would like to sell the sporting licenses, as a service to our community, but not under these conditions. I truly believe I have been offered a bad contract, dumped on us by an uncaring state agency. The fact that many Clerks (certainly not all) have chosen to sign this is not a reason for me to sign it.. The fact that I signed a similar DEC contract years go does not speak to the soundness of the document. I respectfully request Attorney Duffy be directed to give a written legal opinion on the contract itself, and the issues noted above; and then decide whether she would advise her client to sign it.

Vandalism of Pews – Councilor Sullivan reported that the airport committee is in negotiations with the pilots about the removal (from the Snow Equipment Storage Building) and outdoor discard, of church pews purchased by the town.

SUPERVISOR REPORTS:

Motion – Councilor Sullivan

Second – Councilor Taylor

Resolved (#203 - 2014): To adopt Local Law #1-2104, entitled:

**Enacting a 6-month Moratorium on the Peddling
or Transient Sale of Certain Personal Property**

Local Law #1-2014

WHEREAS, the Town of Malone, individually and through its Planning Board, on an ongoing basis, reviews its Zoning Code and the remainder of the Town of Malone Code, regarding, including but not limited to, land use plan and land use regulation, business licensing and regulation; and

WHEREAS, a review of the complete code of the Town of Malone, including but not limited to Chapter 56 thereof, demonstrates that there is no specific regulation of peddling or the transient sale of more than two of the following items upon the streets, public parks, commercial parking lots or other premises of one/half acre or more within the Town of Malone: motor vehicles, furniture, tools, boats, RVs and other recreational vehicles; and

WHEREAS, regulation controlling the establishment, location and operation of peddling or the transient sale of more than two of the following items upon the streets, public parks, commercial parking lots or other premises of one/half acre or more within the Town of Malone: motor vehicles, furniture, tools, boats, RVs and other recreational vehicles is desired to preserve the character and quality of life in the Town’s neighborhoods and business areas and to maintain the general welfare and safety for the Town

and its residents so as to avoid potential negative secondary impacts; and

WHEREAS, a moratorium on the acceptance by the Town of Malone of applications for the establishment, location and operation of peddling or transient sale of more than two of the following items upon the streets, public parks, commercial parking lots or other premises of one-half acre or more within the Town of Malone: motor vehicles, furniture, tools, boats, RVs and other recreational vehicles , for a minimum period of time, i.e. six (6) months, will allow the Town to adopt said regulations.

NOW IT IS HEREBY ENACTED by the Town Board of the Town of Malone as follows:

Section 1: Six month moratorium, effective upon the date of the filing of this Local Law with the Secretary of State, as follows:

There is hereby enacted a six month moratorium on the acceptance by the Town of Malone of applications for the establishment, location and operation of peddling or the transient sale of more than two of the following items upon the streets, public parks, commercial parking lots or other premises of one-half acre or more within the Town of Malone: motor vehicles, furniture, tools, boats, RVs and other recreational vehicles.

Section 2: This local law shall take effect immediately upon filing in the office of the Secretary of State.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye f**

Town Village IMA -

Motion – Councilor Taylor

Second – Councilor Sullivan

Resolved (#205 - 2014): that the Town of Malone will send a letter of intent to the Village of Malone stating that the Town will extend the boundaries of the East- End Sewer District to include Windmill Estates, and incorporate it into the Inter-Municipal Agreement (IMA); and to revise the IMA of both districts to produce just one, covering both districts, with a term of thirty (30) years.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

SUPERINTENDENT OF HIGHWAYS REPORT:

Superintendent of Highways Mallette reported that the department is getting ready for blacktopping, some to be done this year and some in the spring of 2015. The Superintendent asked for authorization to lease a 5000 gallon tank and a spare unit, at an annual cost of \$1.00 each. The tanks would be filled with calcium by tankers delivering to neighboring communities, thereby reducing the need to meet a “minimum” order, and allowing the Superintendent flexibility in scheduling his road work.

Motion – Councilor Scharf

Second – Councilor Sullivan

Resolved (#205 - 2014): to authorize Superintendent of Highways Mallette to order a 5000 gallon calcium storage tank, and a spare unit at an annual lease amount of \$1.00 per unit.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

Motion – Councilor Sullivan

Second – Councilor Scharf

Resolved (#206 - 2014): to authorize Deputy Supervisor Walbridge to sign a 3-year lease agreement, with The Gorman Group, for a 5000 gallon calcium storage tank and a spare unit, at a cost \$1.00 each per year.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

BOARD MEMBER/COMMITTEE REPORTS:

Councilor Scharf reported that the Complete Streets Committee will conduct a ribbon-cutting ceremony on October 6, 2014, in celebration of the completion of a sidewalk project on Elm Street. She said 228 students from St. Joseph’s School will walk the new safer route. Assemblywoman Duprey and MCS

Superintendent Griffin are expected to attend.

Motion – Councilor Sullivan

Second – Councilor Scharf

Resolved (#207 - 2014): that Deputy Supervisor Walbridge will write a letter to the Town of Duane, in support of the restoration of the DeBar Lodge.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

CORRESPONDENCE:

From Anne Farden – a letter of her resignation from the Planning Board due to health issues. Her term was to expire 9/8/2019.

Note: another vacancy exists, with a term ending 9/8/2015-(C. Miller)

Motion – Councilor Taylor

Second – Councilor Scharf

Resolved (#208 - 2014): to accept, with regret and thanks, the resignation of Anne Farden from the Malone Town Planning Board; and to direct the Town Clerk to write a letter of acknowledgement and thanks to Ms. Farden.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

Motion – Councilor Taylor

Second – Councilor Scharf

Resolved (#209 - 2014): to appoint Doug Beane to another 5-year term to the Board of Assessment Review, to expire 09/30/2019.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

NEW BUSINESS:

Motion – Councilor Taylor

Second – Councilor Sullivan

Resolved (#210- 2014) to authorize Budget Officer Stewart to transfer the following:

From Contingency: A1990.4 \$4,700.00

To: A1110.4 Justice Court contractual \$3,000.00
A1010.4 Town Board contractual \$200.00
A1220.4 Supervisor contractual \$500.00
A5182.4 Street Lighting \$1,000.00

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf -**

Reappointment for Consideration -

Planning Board member Nancy Legacy 7 yr. term expired 9/8/2014. Clerk Hafter will contact her to determine whether she is interested in serving another term.

Malone Golf Club -

Motion – Councilor Taylor

Second – Councilor Sullivan

Resolved (#211- 2014) that the Town Board will renew the lease with the Malone Golf Club, with identical terms as the lease signed in 1999, but extending the term of the contract to November 15, 2049, to allow for a long-term loan for capital improvements..

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf -**

EXECUTIVE SESSION:

At 6:35 pm * Motion – Councilor Sullivan

Second – Councilor Taylor

Resolved (#212- 2014) that the Town Board enter into executive session for the purpose of discussing matters relating to proposed, pending or current litigation; with the four Town Councilors and Town Attorney to be present.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

At 7:24 pm, the executive session ended and the regular meeting resumed with no action taken.

DEC Sales Agent Agreement -

Town Attorney Anderson- Duffy gave her findings on the issue of the Town Clerk's concern with the DEC Agent Sales Agreement. She said that past history of the Clerk's DEC sales, and the fact that the Clerk signed a contract in 2002 similar to the one offered now, in her opinion, indicates that the Clerk should still be selling DEC licenses. She noted that Environmental Conservation Law 110713 1a(1) states all DEC sporting licenses shall be issued by clerks of a town. She noted also that the statute allows for the clerk to opt-out selling licenses by authorization of the DEC. Attorney Duffy said it is her opinion Clerk Hafter is out of compliance with the statute until she requests and receives, from the DEC, authorization to cease selling licenses.

Clerk Hafter said she has signed and sent to the DEC a contract, with a hold harmless agreement, as directed by the Town Attorney Duffy, but the DEC refuses to sign. She added that she would sell licenses, but cannot without the signed contract.

Motion – Councilor Scharf

Second – Councilor Sullivan

Resolved (#213 - 2014): that the Town Board directs Clerk Hafter “that the contract be filled out, by the 26th as we requested by letter to you earlier, and that you continue selling licenses until you go through the proper legal procedure to quit.”

Discussion – Clerk Hafter said it is impossible to sell licenses without a signed contract.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

BILLS FOR AUDIT & PAYMENT:

Motion – Councilor Sullivan

Second – Councilor Scharf

Resolved (#214 - 2014): that the following bills, having been audited, vouchers #825 - 850 , be paid:

General Fund (A) – Abstract #18	\$6,783.81
Highway Outside (DB) #15	1,434.26
Trust & Agency (T) #34	27,469.69
Part Town General (B) #13	101.16
Airport Capital Project (H4) #8	<u>16,183.57</u>
Grand Total:	\$51,972.49

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

Other Business – Clerk Hafter said she has not received a letter, as indicated in Councilor Scharf's motion regarding DEC sales. Deputy Supervisor Walbridge said that the Clerk can talk to the Supervisor when he gets back.

ADJOURN:

At 7:30 pm Motion - Councilor Sullivan

Second – Councilor Scharf

Resolved (215-2014): there being no further business to come before the Board that it adjourn, with the next regular meeting to be held at 6:00pm, 10/08/2014.

**CARRIED (4 - 0) – Supervisor Maneely – Absent Deputy Supervisor Walbridge – Aye
Councilor Sullivan - Aye Councilor Taylor - Aye Councilor Scharf - Aye**

RESPECTFULLY SUBMITTED,

SUSAN M. HAFTER, TOWN CLERK
October 2, 2014