

TOWN OF BINGHAMTON
TOWN BOARD WORK SESSION
May 1, 2018

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MINUTES OF THE WORK SESSION OF THE TOWN OF BINGHAMTON TOWN BOARD HELD ON TUESDAY, MAY 1, 2018, 5:00 P.M., TOWN OF BINGHAMTON TOWN HALL, 279 PARK AVENUE, BINGHAMTON, NEW YORK.

The meeting was called to order by Supervisor Whitesell at 5:05 p.m.

ROLL CALL:

| | | | |
|---------------------------|---------|-----------------------------|---------|
| T. Whitesell, Supervisor | Present | N. Yezzi, Deputy Supervisor | Present |
| N. Cline, Councilperson | Present | E. Rounds, Councilperson | Present |
| V. Xlander, Councilperson | Present | | |

OTHERS PRESENT:

| | |
|---------------------------------------|------------------------------------|
| V. Conklin, Town Clerk | N. Pappas, Building Administrator |
| A. Pope, Town Attorney | M. Donahue, Highway Superintendent |
| R. Pope, Deputy Town Attorney | R. Mastin, Planning Board Member |
| K. Callahan, Czerenda Court Reporting | 9 Guests |
| R. Cunningham, Thoma Development | |

Supervisor Whitesell made the following statement: A motion may be made to go into an executive session to discuss a legal matter and/or a personnel matter regarding a particular employee after the meeting is convened.

PUBLIC HEARING – 5:05 p.m. – Dangerous and Unsafe Building – 2339 Oswego Street – Town Clerk Conklin affirmed that the Notice of Public Hearing had been properly posted and published. Attorney Pope began by explaining that the Town of Binghamton Code has a provision for unsafe or structurally deficient properties. In determining if a property is unsafe or structurally deficient, the Town Board first hears witnesses for the Town as well as witnesses for the owner of the property and then has several options for proceeding. Unlike in a court of law, there is no cross-examination by either side. He explained that after the representatives have spoken, the public is allowed to ask questions and then follow-up questions can be addressed to the witnesses. He also explained that a court reporter was present who will document the entire procedure. Several exhibits were presented. Attorney Pope then asked Code Enforcement Officer Pappas to explain his experience with the property.

Nick Pappas, Code Enforcement, Town of Binghamton – Mr. Pappas, Certified Code Enforcement Officer for New York State, explained the recent history of the property. It had been put up for a Broome County foreclosure auction around 2010. The buyer was informed of the property’s deficiencies and was issued an Order of Remedy. The property was sold several years later to the current owner, Mr. Josh Harrington. Mr. Pappas put a placard on the building with the notice to contact him regarding what is needed to bring it up to code. The owner failed to contact Mr. Pappas, so a certified letter was sent, only to be returned unsigned. The property has been vacant for approximately five years. Mr. Harrington applied for a building permit in September of 2016, and made a verbal agreement to clean up the exterior of the property and rehabilitate the house in stages while informing Code Enforcement of its progress. Nothing was done. On December 11, 2017, the building was placarded again, this time with a red sign with a

large white X warning the fire department not to enter as it is unsafe and unoccupied. A month later Mr. Harrington finally communicated by removing the sign and putting it on the floor in the Code Enforcement office and then leaving. At the request of Mr. Pappas, Attorney Pope then sent him a letter. Several weeks later he came in to speak with Supervisor Whitesell, who was not there, and refused to converse with Mr. Pappas. Since December 2017, limited junk and debris from inside the garage and on the surrounding property have been removed. No structural improvements seem to have been done, although Code Enforcement has not entered the building. Mr. Pappas firmly believes the structure is unsafe. It has been vacant several years, boards have rotted, the roof has leaked, and there is undoubtedly problems with mold, decay, insects, bugs, etc. Photographs reveal that the entire back of the structure is open. There is an open floor, open walls, and junk around the yard. Mr. Pappas also stated that it would take at least six months to a year to bring the structure back to code compliance and would require a structural engineering plan signed and stamped along with a timeline to bring it up to code. There is imminent danger for anyone going on the property.

Supervisor Whitesell and Mr. Pappas visited the property today to look at the cleanup of the last two to three weeks. Mr. Pappas stated that the cleanup had not been significant.

Dan Griffiths, Griffiths Engineering, Professional Licensed Engineer in New York, Pennsylvania and Florida, a Professional Licensed Engineer since 1995, stated that he is familiar with the 2339 Oswego Street property. Mr. Griffiths stated that Mr. Pappas asked him to take a look at the property on April 3, 2018. Mr. Griffiths observed the property from the exterior as there was not access to the interior. Mr. Griffiths observed burned floor joists, failing beams and columns that are tipping over. He stated that the back of the house that goes into the main house looked pretty dangerous, and that over time there has been a lot of moisture/rain going into the back of the house, which could cause mold, etc. Mr. Griffiths confirmed that Exhibit G is his letter of opinion. Mr. Griffiths walked the Board through the photographs (Exhibit H) he provided as to any significance in the photographs, pointing out eaves that are completely dry rotted and warped from moisture, and stated as you go further down in the back of the house everything is basically in failure mode. The whole back portion of the house is ready to fall down including beams, columns, burned and rotted joists and there is bug infestation. The roof and roof trusses have also been rotted for years. Support beams are rusted and failing going into the sagging and failing of columns that are going out of plumb and shifting. There are a lot of floor joists that are torqued, rotted and burnt, which are failing right now. He stated that the back portion of the house is definitely in failure mode and that the back portion of the house has had a lot of rain driving into it. He stated that whether it was a column, beam or girder, everything was in failure mode when he saw it.

Councilperson Cline stated that he was at 2339 Oswego Street today and stated saw issues with the foundation at the front part of the house, and asked Mr. Griffiths about foundational issues at the corner of the front part of the house. Mr. Griffiths stated that he saw some shifting and movement in the foundation at that corner. Councilperson Cline also stated that he observed 11 children in the street, and that the open parts of the structure need to be secured.

Mr. Griffiths stated that there are temporary jacks sustaining the floor, along with anything and everything holding things up.

Councilperson Xlander questioned the conflicting reports of Mr. Griffiths and Mr. Edward Gent, an architect contracted by the owner, who stated the main part of the house was structurally sound. She asked if repairing the house to the point where it would meet Town Code, would require taking it down to the foundation and starting over. Mr. Griffiths assured the Board that Mr. Gent was an excellent architect and if he had access to the interior to do a complete pest inspection, mold inspection, and inspect the moisture in the wood and strength of the wood, he could design framing plans to make the house be up to Town Code

Mr. Griffiths stated the following opinion as to whether some or all of the structure is unsafe: The front portion is a questionable because he did not have access to the interior and did not have testing of the mold, bugs, etc. If that portion was reviewed and cleared from all environmental concerns of mold and bugs and Mr. Gent issued a stamped set of plans, he would not have any issue with it. Everything at the back portion of the house would have to be demolished or rebuilt. Mr. Griffiths stated that, in his opinion, this property is unsafe as it is open to transients and children.

Josh Harrington, owner of 2339 Oswego Street stated the following: The house has been deteriorating for over 10 years; an elderly woman lived there and was not able to maintain the property (she is now deceased). He acquired the property a year and a half ago and the first thing he did was make the structure, for the most part, stable. The beams in the pictures were sagging because there were no posts and were rotting at the bottom. The first thing he did was replace the post; it sagged but was structurally sound. He admitted that everything in the back section in his plans will be torn down. He stated that there are no leaks in the main structure. He will have Mr. Gent stamp the letter if need be, but Mr. Gent did go through the structure. Mr. Harrington stated that he asked Mr. Gent what was structurally unsound, and what he should do to fix it. Mr. Gent went through everything and said everything was fine. At this point, Mr. Harrington had replaced one 7 ½' beam, and replaced the front door. He stated that everything was fine until the Fall of 2017 when the insulation issue came up. He stated that he will only work with someone that is qualified to tell him that he needs to do something extra. The house has been on hold for six months because of the insulation issue. He asked Town Attorney Pope when a house is officially condemned. Mr. Pope stated that under Town Code there are a couple of options. If the Code Enforcement Officer feels that it is unsafe and an imminent danger to children, transients or others, he can immediately placard the house. Then if that doesn't resolve the situation, the Code Enforcement Officer can make a recommendation that the Town have a public hearing. Mr. Pope stated that the house is officially condemned as shown by the placement of the placard on the house. The placard was placed on the house because of imminent danger and safety as opposed to structural deficiencies. In this public hearing, both of those factors are considerations the Board would have. Something could be structurally okay, but very unsafe and the Board has to look at both issues. Mr. Harrington stated that NYSEG had been to the property and ripped the gas line out of the house. Mr. Harrington will be putting \$50,000 into the house to make it the best house on the street.

Town Attorney Pope informed Mr. Harrington that we are at a juncture where he will need stamped engineering drawings in order to move forward. Mr. Harrington stated that he has been a contractor for over 20 years. He inquired if the Board wanted Mr. Gent to create a separate

detailed letter specifying that the house is structurally sound, he would be happy to do that. The Board responded that they need a set of detailed plans with an engineer's stamp on them. A portion of an e-mail received by Town Clerk Conklin was read into the record by Councilperson Rounds from a neighboring resident of 2339 Oswego Street. Mr. Harrington stated he will not deal with Mr. Pappas, only an engineer. Mr. Harrington agreed to board up the property where it is open to transients and children. Town Attorney Pope reiterated that the Town needs a stamped set of plans from an engineer, as did Supervisor Whitesell. Mr. Harrington left the public hearing.

Charlotte Heil - 2356 Oswego Street – Mrs. Heil expressed her displeasure of the condition of 2339 Oswego Street.

Jim Cadden – Hawleyton Road – Mr. Cadden asked if 2339 Oswego Street is any worse than 3394 Hance Road. Supervisor Whitesell replied, yes.

Ron Kweller – Owner of a rental property at 2349 Oswego Street - Mr. Kweller expressed his displeasure of the condition of 2339 Oswego Street.

Supervisor Whitesell read the entire e-mail received by Town Clerk Conklin from Linda Trayling, a neighbor on Oswego Street, into the record, which was marked as Exhibit I.

Supervisor Whitesell asked Mr. Pappas about the NYSEG issue. Mr. Pappas replied that he had absolutely nothing to do with NYSEG. Mr. Pappas received a call on his voice mail from NYSEG asking Mr. Pappas about the property condition, and that NYSEG was not going to put a new meter on the house once they saw the house. NYSEG thought the house was going to be torn down. Mr. Donahue added that under Public Service Commission Laws, NYSEG, being the owner of a utility, has a right to disconnect for any reason that they see unsafe. He stated that the water utility has also been disconnected from 2339 Oswego Street because there is no heat in the house.

It was suggested that Mr. Harrington's engineer be a liaison between Mr. Harrington and Mr. Pappas going forward.

Town Attorney Pope explained the next steps as follows: If the Board has enough information, they can make a determination if the property is unsafe and if it structurally deficient. If that is the determination, a resolution can be made to that effect. Along with that, because of the safety issue, the Board would have to, as part of the Board Order, direct Mr. Harrington to secure the property within what the Board believes is a reasonable period of time for him to do it. If Mr. Harrington does not secure the property, then the Town would do it. Mr. Pope stated that with what was discussed today, his suggestion would be not to give Mr. Harrington too many days. If Mr. Harrington does not comply within the requested timeframe, and the Town sends a crew to the property and Mr. Harrington forbids the Town to be on his property, the Town would have to leave the property. The next step would be to go to Supreme Court to obtain a Court Order that allows the Town to access the property, which Town Attorney Pope stated would be the only way to secure the property. Supervisor Whitesell's recommendation to the Board is to facilitate this as soon as possible. Town Attorney Pope also stated that the Board could give Mr.

Harrington a reasonable period of time to get a set of stamped engineering code compliant drawings and submit them to Code Enforcement, and then give him a reasonable time to remediate thereafter. If Mr. Harrington does not meet the deadlines by the Board Order, the Board can have the property demolished at Mr. Harrington's expense. The Town would have to pay the bill, which would be a charge against the property. This can be part of the Board Order. He also stated that there is nothing the Board can do under the Town Code that we are talking about for this hearing to obtain ownership. That is not an option.

Mr. Griffiths stated that a reasonable amount of time would be one to two weeks for an engineer to provide Mr. Harrington with a set of stamped engineering plans, or longer depending on how busy the engineer is. He also stated that 30 days would be a very reasonable amount of time for Mr. Harrington to obtain a set of stamped engineering plans.

A motion was made by Councilperson Rounds declaring the property at 2339 Oswego Street as an unsafe structure and structurally deficient, and the motion was seconded by Councilperson Yezzi. All those present voted in favor of the motion. Motion carried.

A motion was made by Councilperson Yezzi to send certified notification to Mr. Josh Harrington that the structure at 2339 Oswego Street be safely secured against unlawful intrusion by transient persons, children and/or others by the date of Thursday, May 17, 2018. If 2339 Oswego Street is not safely secured by Thursday, May 17, 2018, the Town of Binghamton will go in and make the structure safely secure at the owner's expense, and further that a full set of engineer/architect stamped code compliant drawings be received no later than Thursday, May 31, 2018 by the Town of Binghamton Code Enforcement Officer. And further, assuming the plans are acceptable, a building permit must be obtained, remediation must be completed within six months, and if the property owner fails to comply with providing a full set of engineer/architect stamped drawings that are code compliant by May 31, 2018, or fails to perform the remediation in a timely manner, then the Board will order the property to be demolished by the property owner by December 5, 2018, and the motion was duly seconded by Councilperson Xlander. All those present voted in favor of the motion. Motion carried.

(Public Hearing Notice Appended)

The public hearing was declared closed at 6:30 p.m. A recess was taken at 6:30 p.m. The Work session reconvened at 6:36 p.m.

APPROVAL OF AUDITED CLAIMS:

Councilperson Cline made the motion to approve the following claims as audited:

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|--------------|-------------------|--------------|
| Lighting | Claim No. 325 | \$ 761.52 |
| Sewer | Claim No. 326 | \$ 79.50 |
| Water | Claim No. 327-330 | \$ 840.24 |
| Highway Fund | Claim No. 331-342 | \$ 4,704.58 |
| General Fund | Claim No. 343-373 | \$ 16,231.71 |

The motion was duly seconded by Councilperson Xlander. All those present voted in favor of the motion. Motion carried.

COMMUNICATIONS AND ANNOUNCEMENTS:

Spring Branch and Brush Pick-Up – May 7-29, 2018

Rabies Clinic – Wednesday, May 23, 2018, 6:00-7:00 p.m. at the Town Highway Garage

Memorial Day – Municipal Buildings Closed –The TOB Municipal Buildings will be closed on Monday, May 28, 2018 in observance of Memorial Day.

Memorial Day – Parade and Service – Memorial Day Parade and Services will be held on Monday, May 28, 2018 at 10:00 p.m.

OFFICIALS AND COMMITTEE REPORTS:

Planning Board – The Planning Board met on Tuesday, May 24, 2018. Ray Mastin will speak this evening on PDD and zoning issues. The next regularly scheduled meeting will be on Tuesday, July 24, 2018.

Zoning Board of Appeals – The Zoning Board of Appeals met on Wednesday, April 18, 2018. Two cases came before the Zoning Board of Appeals on that date. The first case, 3697 Mill Street, the Fetten property, was rescheduled because there was a quorum, but according to the Zoning Board of Appeals and their Town Attorney, Kurt Schrader, the majority of the Zoning Board of Appeals has to be present, which was not the case. The case has been held over and will be rescheduled upon finding a replacement for a vacancy on the Zoning Board of Appeals. The second case was approved three to zero, and a variance was granted for the Fisher residence at 2062 Cheshire Road. Councilperson Cline stated that he is drafting a letter to send to the Zoning Board of Appeals members regarding several issues. Councilperson Cline requested that residents be reminded to obtain building permits when needed. Supervisor Whitesell will put the reminder on the TOB website.

Youth Commission – Picture day was Saturday, April 28, 2018 at Jackson Park. Due to wet fields, opening ceremonies and games were postponed to a later date. The background checks are almost completed.

Code Enforcement – There have been five property registrations whose applications have been received. There have been building permits issued for small upgrades. Mr. Pappas has been cleaning up properties.

Highway Department – The sanders have been put away for the season. Mr. Donahue met with the Joint Sewage Treatment Plant regarding flows. The City Controller reviewed reports to ensure they are in line with the billing. Roads have been swept. Branch and brush pickup will begin on May 7th. The Highway Department is getting ready for paving season. The CHIPS money is about the same as it was last year. The State is now Googling roads instead of

physically measuring road mileage. A lot of villages statewide went down approximately 15% in road mileage because the street was actually in a town and the village was taking credit for it. A project on West Hamton will begin tomorrow. The Highway Department is doing drainage work and getting ready to pave. An outdated fire hydrant will be replaced on Hickory Lane, along with replacing a couple of other fire hydrants.

SUPERVISOR'S REPORT:

Broome County Association of Towns and Villages – Monthly Meeting – There was no report.

UNFINISHED BUSINESS:

TOB Hance Road Property – Logging Timber Harvesting – Update – The logging timber harvesting has been put back out to bid. Bids are due back on May 15, 2018 and will be under consideration.

Thoma Development – Update - Rich Cunningham of Thoma Development recapped the process that Town has been through thus far in attempting to obtain grant money. The application was submitted last September but a grant was not received. There was less money available and funds were needed for the critical flooding on Lake Ontario. During this application process, they are going to do more to leverage the application and plan to perform another income survey to assess the needs of Town residents. Mr. Cunningham also suggested identifying residents with needs by name and address so they can be contacted directly in case they are not part of the survey. There are safeguards to assure that a resident's privacy is maintained once they are willing to be a part of the application. The revised surveys should be mailed out in approximately one week. The grant will be organized and ready in September. A public hearing will have to be held prior to submitting the application in September. Councilperson Cline made the motion to set a public hearing for the Thoma Development grant for Tuesday, July 17 at 7:01 p.m. and the motion was duly seconded by Councilperson Xlander. It was discussed that every attempt will be made to contact those who would benefit from attending the public hearing by letter, Town Talk and on the website. A roll call vote resulted in the following:

Ayes: Xlander, Rounds, Yezzi, Cline, Whitesell

Absent: None

Nays: None

Whereupon, the motion was declared adopted.

(Resolution Appended)

Code Enforcement – Amendment of Local Law – Building Permit Application – There is a meeting scheduled for tomorrow to discuss the amendment to the local law.

Audit – Justice Court – The audit of the Justice Court will be completed Monday, May 7, 2018.

Youth Commission – Background Checks – Update – A discussion was held during Officials and Committee Reports.

Proposed Changes to Employee Handbook Section 708 – Medical Insurance for Retirees – Attorney Pope advised that proposed changes for the premium payment which is applicable to certain of the retirees should be changed to more clearly state that the Town Board may at any time within its discretion and in accordance with the planned documents modify the premium payment for and or contribution by any retiree. It appears that the last sentence in the last part was meant to encompass both of those, but it could be misread that the only time the Board could make a change is for the Medicare reimbursement and it should be in both. The last sentence should be changed to: The Town Board may at anytime at its discretion and in accordance with the planned documents modify this Medicare reimbursement for any retiree. He also added a separate sentence that Medicare insurance for retirees is a benefit and not a vested right. Supervisor Whitesell will forward the modifications to the Board and, if members agree with the changes, it will be moved to the preferred agenda for the Board’s consideration.

NYS Comptroller/Association of Towns – Town Finance School – Councilperson Cline made the motion to approve Councilperson Xlander and Councilperson Rounds to attend the NYS Comptroller/Association of Towns Town Finance School Wednesday, May 9 through Friday, May 11 in Albany at the cost of \$285 each plus one hotel room and expenses with use of the Town vehicle and the motion was duly seconded by Councilperson Yezzi. All those present voted in favor of the motion. Motion carried.

Family Leave Act – Resolution to Opt Out – The resolution to opt out of the Family Leave Act was discussed. It was agreed that opting out would be advised as it does not prevent the Town from still providing family leave on a case-by-case basis and gives the Town more latitude in decision making. This will be moved to the preferred agenda for the Board’s consideration.

Planning Board – PDD – Ray Mastin, Planning Board Member, discussed recommendations from the Planning Board for PDD parcels in the Town that are not zoned correctly. He presented the Board with maps and zoning change suggestions for the following areas:

- Mill Road
- West Side of Park Ave./South of Peckham Rd.
- East Side of Park Ave./North of Carman Rd.
- North Side of Ingraham Hill Rd.
- South Side of Ingraham Hill Rd.
- North Side of Webb Rd.
- Edwards Properties on Webb Rd.
- Maxian Rd. – Park and Residential Properties
- East Side of Hance Rd.
- Pennsylvania Ave. (Lone Maple)
- Reynolds Circle (Torto’s)
- Fahs & Deninis Properties

There has to be a legal opinion on Torto’s and on Lone Maple Farm, both of which are zoned R1 even though they should be PDD.

Mr. Mastin will meet with the Broome County Planning Department to have the maps corrected.

MEGA CCA – Update – Supervisor Whitesell received an e-mail from Louise Gava showing the next steps that need to be taken in the process. She states that the next step for the Town is at least two months away, and we will be hearing more from them in the very near future.

Water/Sewer Clerk – Update – The Personnel Committee met with Nadine Pappas, who will be taking over the duties of Water/Sewer Clerk. Ms. Pappas is currently working with Becky Smith on the most recent water/sewer billing.

There was no further unfinished business.

NEW BUSINESS:

Highway Department – Pipe Lining – West Hamton – Mr. Donahue stated that John Martin, Engineer, provided him with a Construction Cost Estimate for a 4,200 foot Sanitary Sewer Trenchless Lining Project that would begin from the City line back up to the City line at W. Hamton and Hawthorne Roads. Last year all of the manholes were replaced. If going forth with the project, the project could be done in tiers or sections. The full project would have to be bonded. There would probably be three phases. If done in three phases, there would be no bonding required. This will be discussed at a future meeting.

ZBA – Kate Karlson – Resignation – Supervisor Whitesell received a letter of resignation from Kate Karlson as she has decided to move out of the Town. Not being a Town resident, Ms. Karlson is required to resign her position as a member of the ZBA. A motion was made by Councilperson Xlander authorizing the posting of the vacant position on the ZBA in The Country Courier, and the motion was duly seconded by Councilperson Yezzi. All those present voted in favor of the motion. Motion carried.

Authorization for Hickory Common School District To Use Town Hall – A motion was made by Councilperson Xlander authorizing the Hickory Common School District to use the Town Hall on May 8, 2018 at 7:00 p.m. and May 15, 2018 at 7:30 p.m., and was duly seconded by Councilperson Cline. All those present voted in favor of the motion. Motion carried.

There was no further new business.

ADJOURNMENT:

Councilperson Cline made the motion to adjourn the meeting, and the motion was duly seconded by Councilperson Yezzi. There being no further discussion, all those present voted in favor of the motion. Motion carried. The meeting was adjourned at 8:11 p.m.

The next meeting of the Town of Binghamton Town Board will be a regular Town Board meeting to be held on Tuesday, May 15, 2018 at 7:00 p.m., at the Town of Binghamton Town Hall, 279 Park Avenue, Binghamton, NY. Respectfully submitted,

Vickie A. Conklin

A handwritten signature in black ink, appearing to read "Vickie A. Conklin", with a long horizontal flourish extending to the right.

Town Clerk