

05/08/07 Zoning Board Agenda

April 26, 2007

LEGAL NOTICE

Town of Elma

NOTICE IS HEREBY GIVEN the Zoning Board of Appeals will hold a hearing on Tuesday, May 8, 2007 at 8:00 PM, at the Elma Town Hall, 1600 Bowen Road, to hear the following:

Appeals Case #1075 for Gary & Carol Brooks, 210 Handy Rd, who are requesting a variance for a building lot which is 2.1 acres but is lacking depth (50Æ) to meet the Town of Elma Code 100-3 for personal use only, no business use. Previous Appeal Case # 1047. Res. C.

Appeals Case #1076 for Donald & Cynthia White, 81 King Rd, who are requesting a variance to take down a garage and replace with a 32Æx32Æ garage with patio for personal use only, no business use. Res. C. 52-6.

Appeals Case #1077 for T. Michael Dugan Jr, 8181 Tonawanda Creek Rd, who is requesting 2 variances for 1241 Bowen Rd for Specialized Tree Service. 1. A variance to park 5 commercial pieces of equipment and 5 commercial trucks outside and 2. A variance to store 2 - 300 gallon fuel tanks. Commercial. 144-78 B. 144-151 C and 144-152 A.

Donald Trzepacz, Chairman
Zoning Board of Appeals

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A regular meeting of the Elma Town Board was held on Wednesday, April 18, 2007, at 8:00 PM, Elma Town Hall, 1600 Bowen Road, Elma, New York, with the following members present:

Supervisor Michael Nolan
Councilwoman Susan Glownia
Councilman David Polak
Councilman Dennis Powers
Councilman Dean Puleo

Also: Town Attorney Phyllis Todoro
Building Inspector Joseph Colern
Highway Superintendent Wayne Clark-Absent
Water Superintendent Eugene Stevenson
Town Engineer James Wyzykiewicz

Approximately 59 people attended the meeting.

The meeting was opened with the reciting of the Pledge of Allegiance.

Making the Legal Notice for the Public Hearing on Local Law #1-2007 Moratorium on Land Use part of the minutes Supervisor Nolan opened the Public Hearing at 8:02PM.

No one spoke against the Local Law #1-2007.

Speaking for the Local Law #1-2007: M Fanelli, D Rohl, P Scheer, B Koch, R Tharnish, K Bakowski, J Ronin, A Harrington and other residents.

Supervisor Nolan closed the Public Hearing at 8:19PM.

Councilman Powers made the motion and Councilman Polak seconded the motion to Approve Local Law #1-2007 Moratorium on Land Use. Ayes-5. Noes-0. Carried.

Councilman Powers made the motion and Councilman Puleo seconded the motion to approve the minutes from the April 4, 2007 meeting. Ayes-4. Noes-1. (Councilman Polak voted no.) Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to add to the Agenda privilege of the floor comments made by Councilman Polak regarding

the \$10,000 Conservation Club Grant from the April 4, 2007 Town Board meeting. Ayes-2. Noes-3. (Councilman Powers, Councilman Puleo and Supervisor Nolan voted no.) Motion not carried.

Department Reports

Building Inspector Joseph Colern is obtaining estimates for a backup generator at the Senior Center. The Town Board will review estimates at the next Work Session. Water Superintendent Gene Stevenson noted that the restrooms at the Town Parks will be in operation and four new fire hydrants will be installed to upgrade the system. Two new hydrants on West Blood Road and two on Hall Road.

Councilwoman Glowonia made the motion and Councilman Puleo seconded the motion to approve Patricia Jakubowski attending the 2007 Spectrum Customer Conference on May 17, 2007 at the cost of \$264.00 plus meals and mileage. Ayes-5. Noes-0. Carried.

Councilman Polak made the motion and Councilman Powers seconded the motion to approve the agreement for the Elma Satellite Office of the State Police. Ayes-5. Noes-0. Carried.

Councilman Powers made the motion and Councilman Puleo seconded the motion to approve Warrant #4 as follows with noted exceptions: Claim #335 to #449
General Fund \$41,869.58 Water District \$15,206.04
Highway Fund \$13,408.82 Special District \$ 2,057.26
Ayes-5. Noes-0. Carried.

Councilman Puleo presented the following resolution to be added to the Agenda:
WHEREAS, in 2005, New York State created the "New York State Commission on Health Care Facilities in the 21st Century" (hereinafter referred to as "Commission") to reorganize the hospital system in New York State, and to otherwise make hard choices for the hospital system, which has been plagued by financial difficulties, and
WHEREAS, this Commission is comprised of 18 permanent members, with 12 appointed by Governor Pataki, and 3 each appointed by the Senate and Assembly, and

WHEREAS, one of the responsibilities of the Commission is to reduce the number of and downsize hospitals to control costs and improve quality, and WHEREAS, the Commission made its recommendations to Governor Pataki on November 28, 2006, and

WHEREAS, the Commission's recommendations will take effect and will be carried out by 2008 since the State Legislature did not reject them in their entirety by December 31, 2006, and WHEREAS, a recommendation has been made to close St. Joseph Hospital in Cheektowaga, and WHEREAS, this recommendation has been opposed by the Catholic health System, and WHEREAS, the Catholic Health System has already taken action to reduce costs and make its hospitals more efficient by converting Our Lady of Victory hospital in Lackawanna to other uses and merging St. Jerome Hospital in Batavia into another facility, and WHEREAS, the Catholic Health System is currently promoting a proposal to reduce the number of beds at St. Joseph Hospital from 208 to 158, and at Sisters Hospital from 413 to 313, and WHEREAS, residents in the Town of Cheektowaga and nearby Towns, including Elma, rely heavily upon the accessibility of St. Josephs Hospital, and, without this hospital in their Town, the lives and health of their residents would be severely jeopardized by requiring them to travel long distances to access the emergency room and health care, and WHEREAS, the closing of St. Joseph Hospital would have a devastating effect on the local economy by the loss of jobs and the loss of business in the area, and WHEREAS, St. Joseph Hospital is vital to preserving quality health care and access to health care of Cheektowaga residents, and WHEREAS, the loss of St. Joseph Hospital would severely affect the poor and uninsured in this area, and WHEREAS, any suggestion that St. Joseph Hospital should close would be based on cold data rather than the very human needs of the local community, and WHEREAS, the Town Board of the Town of Elma supports Assembly Bill A5382 sponsored by Assemblyman Dennis Gabryszak and Senate Bill S2942 sponsored by Senators Dale Volker and William T Stachowski NOT TO IMPLEMENT THE RECOMMENDATION OF THE COMMISSION with regard to St. Joseph Hospital. NOW, THEREFORE, BE IT RESOLVED, that the Town Board strongly urges Governor Spitzer, Assemblyman Michael Cole, Senator Dale Volker and all other State representatives from Western New York to help us protect the residents of the Town of Cheektowaga and all towns serviced by the Hospital by rejecting the recommendation from the Commission to close St. Joseph Hospital, and BE IT FURTHER RESOLVED, that the Town Clerk is hereby directed to forward certified copies of this resolution to Governor Eliot Spitzer, Assemblyman Michael Cole, Senator Dale Volker and copies to all Towns and Villages in Erie County with a request that they enact a similar resolution.

Councilman Puleo made the motion and Councilman Powers seconded the motion to add the St. Joseph's Hospital resolution to the Agenda. Ayes-5. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve the resolution in support of St. Joseph's Hospital. Ayes-4. Noes-0. Abstain-1. (Supervisor Nolan abstained) Carried.

Supervisor Nolan informed the residents that the NYS DOT will be reducing the speed limit on Route 354 (Clinton Street) in the Towns of Elma and Marilla to 45 MPH from Bowen Road easterly to the Wyoming county line. Also Senator Dale Volker has approved a Legislative Initiative in the amount of \$12,000 for the Creek Road Town Park Rehabilitation Project.

All have received the Planning, Zoning and Conservation Board Agenda and Minutes.

Supervisor Nolan noted there will be a Work Session on Wednesday, April 25, 2007 at 6:00PM.

Meeting Adjourned at 8:55PM.

Respectfully submitted,

Patricia King
Town Clerk

Wednesday, April 18, 2007

Title Local Law No. 1-2007
Imposing a Twelve Month Moratorium on Land Use Approvals or Applications for Land Use in the Commercial and Restricted Commercial Zones in the Town of Elma.
Section 1: Title.

This Local Law shall be referred to as Local Law Imposing a Twelve Month Moratorium on Land Use Approvals or applications for Land Use Approvals or

applications for Land Use in the Commercial and Restricted Commercial Zone in the Town of Elma.ö

Section 2: Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Elma and its Town Board to regulate and control land use and to protect the health, safety and welfare of its Residents; and to address present and future development within the Town; and Pursuant to the Comprehensive Plan adopted by the Town of Elma on May 21, 2003; and to continue the update of the Town's Land Use Regulations, including but not limited to the Zoning Code of the Town of Elma; the Town Board of the Town of Elma hereby declares a twelve (12) month moratorium on the approval of land use or the application for land use in the commercial and restricted Commercial zones of the Town of Elma. At the discretion of the Town Board, there shall be the possibility of two (2) separate six (6) month periods of extension imposed, after proper notice and a public hearing, to be held within forty-five (45) days prior to the expiration of said moratorium period.

Section 3: Statutory Authority: Suppression.

A. This Local Law is adopted pursuant to the authority granted to the Elma Town Board pursuant to section 10(1)(i); 10(1)(ii); 10(1)(iii)(3)(d); 20 and 27 of the Municipal Home Rule Law and in compliance with section 239-m of the General Municipal Law.

B. This Local Law supersedes the resolution made by the Elma Town Board on February 14, 2007, which imposed a six (6) month Moratorium.

C. This Local Law supersedes #144-71 through #144-86 (inclusive). #144-100 and #144-101 of the Codes of the Town of Elma, New York.

Section 4: Term.

This Local Law shall be in effect for a period of twelve (12) months. There shall be the possibility of two (2) separate six (6) month periods of extension imposed, after proper notice and a public hearing to be held within forty-five (45) days prior to the expiration of said moratorium period.

Section 5: Scope of Controls.

A. During the effective period of this Local Law:

a. The Town Board of the Town of Elma shall not refer to the Planning Board any new request for Commercial site plans.

b. The town of Elma Planning Board shall not make any recommendations or referrals to the Town Board or any other applicable Board of the Town for any approval, any commercial site plan, or other permit that would result in the development of a commercial property.

c. The Town Board of the Town of Elma shall not grant any preliminary commercial business use permit for any project that requires new construction or significant renovation.

Section 6: Exceptions.

A. This Local Law will not include or prohibit the consideration of any residential construction in the commercial zone.

B. This Local Law shall not include or prohibit the consideration of any additional applications for subdivisions which have already received concept approval by the Elma Town Board, of any commercial construction that would not involve any Town Board or Town Planning Board approval.

C. This Local Law shall not include any project that has received final approval, however, has not yet started construction.

D. This Local Law shall not include any industrial project as defined and regulated in #144-87 through #144-93 (inclusive) and #144-102 of the Code of the Town of Elma, New York.

Section 7: Variances.

A. Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purpose of this moratorium, unnecessary hardship shall not be the mere delay in being permitted to make an application or writing for a decision on the application for a building permit, subdivision map, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.

B. Substantive requirements: No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such exemptions that:

a. Failure to grant an exemption to the petitioner will cause the petitioner unnecessary hardship, is substantially greater than any harm to the general public welfare resulting from the generating of the exemption; and

b. The grant of the hardship, even if the project or activity for which exemption is sought is approved, will clearly have no adverse effect upon any of the Town's goals or objectives in undertaking the community planning effort or in adopting this moratorium, including but not limited to the effects resulting from uses detrimental to the community's resources or character, from loss or potential open space including areas important as wildlife habitat or from other adverse environmental impacts; and

c. The project or activity for which the petitioner seeks an exemption is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town or community-planning effort then progress; or the project or activity for which the petitioner seeks an exemption is submitted in connection with workforce or senior citizens affordable housing development; and

d. The alleged extraordinary hardship is not the result of any delay, action or inaction by the applicant, the property owner, or predecessors-in interest and that such alleged hardship has not been self-created; and

e. Failure to grant a hardship exemption to the applicant will cause hardship to the surrounding area, community, neighborhood, or general public welfare resulting from the granting of the exemption. In determining the magnitude of the alleged harm, the Town Board may consider the applicant's monetary investment in the completed application, prior to the moratorium, as applicable to such application; however, such monetary investment shall be only but one factor and shall not be the controlling factor in demonstrating extraordinary hardship.

C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking relief from this Moratorium, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon five days written notice in the official newspaper in the Town. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have the opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of the public hearing, render its decision either granting or denying the application for relief from the strict requirements of this Moratorium. If the Town Board determines that the property owner will suffer an unnecessary hardship if this Moratorium is strictly applied to a particular property, then the Town Board shall grant relief from the moratorium to the minimum extent necessary to provide the property owner relief from strict compliance with this Moratorium. The town Board may impose any conditions on any grant that is deemed necessary.

Section 8: Severability.

Each separate provision of this local Law shall be deemed independent of all other provision herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

Section 9: Effective Date.

This Local Law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

