

REGULAR MEETING, TOWN OF RANDOLPH, February 8, 2017

A regular meeting of the Town Board of the Town of Randolph, County of Cattaraugus and the State of New York was held at the Municipal Building, 72 Main Street, Randolph, NY on the 8th day of February 2017.

PRESENT: Dale Senn ----- Supervisor
Tim Beach ----- Councilman
John Hale ----- Councilman
Amber Frame ----- Councilwoman
Gretchen Hind ----- Clerk
Gary Sickles ----- Superintendent of Highways

ABSENT: Bridget Marshall ----- Attorney
Nate Root ----- Councilman

OTHERS PRESENT: Elise Gorth – Randolph Register; Jeffery Greeley-Town Justice; Dave Heckman - Code Enforcement; Jake Alianello-MDA Engineers; Tom Lecceadone-ThisisRandolphNY and Bob Learn-Resident.

REGULAR MEETING

Supervisor Senn called the meeting to order at 7:30PM with the pledge of allegiance.

RESOLUTION 15-2017

APPROVAL OF MINUTES

On a motion of Councilman Hale, seconded by Councilwoman Frame, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
Nays 0

Resolved that the minutes of January 4, 2017 be approved as presented.

REPORT OF TOWN OFFICIALS

TOWN JUSTICE

Justice Greeley provided the Board with a summary report of 2016.

CODE ENFORCEMENT

3 permits for a total of \$145 were issued for January 2017. 56 Main St. was reposted with a new condemnation notice. Dave Heckman is in contact with the bank that owns the property.

Attorney Marshall entered the meeting at 7:40 PM.

RACDC- NO REPORT

Monthly Report of the Supervisor

December 2016 and January 2017 reports were provided to the Board.

CLERK

Clerk Hind submitted the monthly report for January 2017 to the Board. The local shares were \$156.28. The 2016 Clerk's Annual Report was also submitted for a total collected of \$70,553.46.

SUPERINTENDENT OF HIGHWAYS

Superintendent Sickles supplied the Board a report on the activities for the month of January 2017.

WATER/SEWER

Water Project update was provided to the Board by MDA Engineers and an Annual Report from Dave Fischer.

SAMPLE HILL

No activity.

COMMUNICATIONS

Communication was received from The Association of Towns regarding their annual meeting,

OLD BUSINESS

RESOLUTION 16-2017

SCHEDULE PUBLIC HEARING ON LOCAL LAW#2-2017

On a motion of Councilman Beach, seconded by Councilman Hale, the following resolution was

ADOPTED	Ayes	4	Beach, Hale, Senn, Frame
	Nays	0	

Resolved that the Town will schedule a Public Hearing on Local Law No. 2-2017 Flood Damage Prevention for March 8, 2017 at 7:30PM.

RESOLUTION 17-2017

NON CHARGED WATER ACCOUNTS

On a motion of Councilwoman Frame, seconded by Councilman Beach, the following resolution was

ADOPTED	Ayes	4	Beach, Hale, Senn, Frame
	Nays	0	

Resolved that the Town will continue the practice of not charging water and/or sewer accounts that are owned by the Town, Fire Departments and/or Districts and Cemeteries.

RESOLUTION 18-2017

COURT AUDIT

On a motion of Councilwoman Frame, seconded by Councilman Hale, the following resolution was

ADOPTED	Ayes	4	Beach, Hale, Senn, Frame
	Nays	0	

Resolved that after Supervisor Senn audited the books of the Justice Department prior to the Board meeting, the Board approves the audit as recommended by Supervisor Senn: Pursuant to Town Law Section 123 the criminal and civil dockets of the Town Justice for 2016 having duly examined and the fines and fees have been turned over to the proper officials.

RESOLUTION 19-2017

AUDIT OF TOWN CLERK BOOKS

On a motion of Councilman Beach, seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
 Nays 0

Resolved that after the Board audited the Clerk's books prior in the evening, that the records of the Town Clerk for 2016 having been duly examined and found all fees have been turned over to the proper officials.

NEW BUSINESS

RESOLUTION 20-2017

AUTHORIZING COMMENCEMENT AND PROSECUTION OF A THIRD-PARTY ACTION ON BEHALF OF THE TOWN OF RANDOLPH IN STATE SUPREME COURT FOR THE RECOVERY OF CERTAIN COSTS ASSOCIATED WITH THE DEMOLITION AND REMEDIATION OF PROPERTY LOCATED AT 112-114 MAIN STREET

On a motion of Councilman Beach, seconded by Councilwoman Frame, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
 Nays 0

TOWN BOARD OF THE TOWN OF RANDOLPH

Resolution Authorizing Commencement and Prosecution of a Third-Party Action on behalf of the Town of Randolph in State Supreme Court for the Recovery of Certain Costs Associated with the Demolition and Remediation of Property Located at 112-114 Main Street, Randolph, New York 14772

WHEREAS, Randolph McNallie LLC is the record owner of 112-114 Main Street, Randolph, New York 14772 (the "Property"), and owns or owned the buildings and improvements thereon, including the former McNallie Fisher building (the "Building"), which has since been demolished; and

WHEREAS, Craig Marlatt and Mark Storch are members, principals, and/or otherwise have controlling interests in Randolph McNallie, LLC (the "Owners"); and

WHEREAS, the Owners were responsible for maintaining the Building in a structurally sound and reasonably safe condition; and

WHEREAS, the Owners failed to properly maintain the Building in a reasonably safe and structurally sound condition, resulting in a partial collapse of the Building; and

WHEREAS, on or about May 11, 2015, to protect the health, safety and welfare of the residents of the Town of Randolph (the “Town”), the Town issued an Emergency Demolition Order with respect to the Building, and demolished it; and

WHEREAS, on or about August 2, 2016, Randolph McNallie LLC sued the Town, the Town Board of the Town of Randolph, and the Town Supervisor of the Town of Randolph in State Supreme Court for the County of Cattaraugus, Index No. 84847, raising claims of trespass, negligence, and negligent misrepresentation in response to the Town’s demolition of the Building (the “Primary Action”); and

WHEREAS, to the extent the Town may be liable to Randolph McNallie LLC for the demolition of the Building, those actions were necessary due to the negligence, intentional acts, and/or omissions of the owners, meaning that if any recovery is had by Randolph McNallie LLC in the Primary action the Town is entitled to indemnification and/or contribution from the Owners; and

WHEREAS, having been unable to get the Owners to remediate the rubble and other debris resulting from the demolition of the Building, the Town hired third-party contractors to remove this debris and remediate the Property; and

WHEREAS, the Town has incurred significant costs to both demolish the Building and remediate the Property; and

WHEREAS, the Town has filed a mechanics’ lien against the Property with the Cattaraugus County Clerk to recover the costs associated with the demolition and remediation of the Building; and

WHEREAS, Town Law § 65 authorizes the Town to commence an action to recover the damages it incurred to conduct the demolition and remediation, to recover indemnification and/or contribution from responsible tortfeasors, and to foreclose on its mechanics’ lien; and

WHEREAS, the Town desires to hire Hodgson Russ, LLP as outside counsel for the purpose of commencing this third-party action on the Town’s behalf and pursuing these claims against the Owners; and

WHEREAS, Community Bank Systems, Inc. (“Community Bank”), is the owner of certain real property and operates its business at 122 Main Street, Randolph, New York, immediately adjacent to the Property (the “Community Bank Building”); and

WHEREAS, during the partial collapse and subsequent demolition of the Building on or about May 11, 2016, the Community Bank Building allegedly sustained damage; and

WHEREAS, on July 22, 2016, the Charter Oak Fire Insurance Company, as subrogee of Community Bank, filed suit against the Town of Randolph, Randolph McNallie LLC, and the contractors involved in the demolition Building, in the action in Cattaraugus County Supreme Court titled *Charter Oak Fire Ins. Co. v. Town of Randolph et al*, Index No. 84816, to recover the damages allegedly sustained by Community Bank during the demolition (the “Related Action”); and

WHEREAS, the Primary Action and the Related Action concern the same operative set of facts and many of the same parties, and consolidating the two actions would be cost-effective and expedient for the Town.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Randolph as follows:

1. Commencement and prosecution of a third-party action in State Supreme Court by Hodgson Russ LLP is hereby authorized and approved against the Owners (and any other party determined to be liable) for the purpose of recovering the costs associated with the demolition of the Building and remediation of the Property, as well as foreclosing the mechanics’ lien on the Property.
2. Hodgson Russ LLP shall pursue consolidation of the Primary Action and Related Action to the extent practicable.
3. This Resolution shall be effective immediately.

RESOLUTION 21-2017

WEEDEN PARK USAGE – RANDOLPH LITTLE LEAGUE BASEBALL

On a motion of Councilman Beach seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town authorizes Randolph Area Little League Baseball to use Weeden Park facilities for practices and games upon receipt of their insurance certificate.

RESOLUTION 22-2017

HIGHWAY TRUCK PURCHASE

On a motion of Councilman Beach seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town approves the purchase of a new 2018 Mack GU 712 Single Axle Dump truck from Beam Mack Sales and Service Inc. through Onondaga County Heavy Truck Class 8 Statewide Contract #7823 for a total of \$195,281.57.

RESOLUTION 23-2017

RICHARDSON & PULLEN RETAINER AGREEMENT

On a motion of Councilman Hale seconded by Councilman Beach, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town approves the Retainer Agreement with Richardson & Pullen for 2017.

RESOLUTION 24-2017

FEMA PROJECTS – MILL STREET and W. MAIN STREET CULVERTS BID AWARD

On a motion of Councilman Hale seconded by Councilman Beach, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town awards the bid to the lowest responsible bidder for the FEMA related repair project for Mill Street culvert replacement to CATCO for \$154,730.00 and the West Main Street Culvert replacements to CATCO for \$223,944.00. Supervisor Senn is authorized to sign all notices and contracts upon receipt of CATCO's Bonds and Insurance.

RESOLUTION 25-2017

DWSRF – PAY APPLICATION No. 7 for CONTRACT No. 6 – JD NORTHRUP

On a motion of Councilman Beach seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town approves Pay Application No. 7 for Contract No. 6 with JD Northrup for \$27,858.75 and also authorize Supervisor Senn to sign the Joint Application Form with the USACE.

RESOLUTION 26-2017

BUDGET TRANSFER

On a motion of Councilman Beach seconded by Councilwoman Frame, the following resolution was

ADOPTED Ayes 4 Hale, Senn, Frame, Beach
 Nays 0

Resolved that the Town authorizes the following budget transfer:

WATER FUND

\$6,200 From SW8320.4 – Source Supply – Contractual
\$6,200 To SW9030.80 – Employee Benefits – Social Security

RESOLUTION 27-2017

EXECUTIVE SESSION

Upon request of Attorney Marshall, on a motion of Councilman Beach, seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
 Nays 0

Resolved that the Board enter into Executive Session at 8:30PM for discussion regarding possible litigation.

RESOLUTION 28-2017

EXECUTIVE SESSION

On a motion of Councilman Beach, seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
 Nays 0

Resolved that the Board return to regular session at 8:55PM.

RESOLUTION 29-2017

AUDIT OF BILLS

On a motion of Councilman Beach, seconded by Councilman Hale, the following resolution was

ADOPTED Ayes 4 Beach, Hale, Senn, Frame
 Nays 0

Resolved that the bills be paid on Abstract #2 in the following amounts:

General Fund	No. 18-56	\$111,815.88
Street Lighting District		4,146.61
Refuse District		872.88
Fire District		145,364.00
Snow Removal		371.24
Highway Fund	No. 8-26	122,996.56
FEMA Repairs		134.55
Sewer Fund	No. 3-15	11,510.81
Water Fund	No. 8-21	11,945.61
WATER CAPITAL PROJECT – DWSRF #18013	No. 4-8	30,209.31

With no further business, on a motion from Councilman Beach, seconded by Councilman Hale, the meeting was adjourned at 9:15 pm. Carried unanimously.

Gretchen A. Hind, Town Clerk