

MEETING, TOWN BOARD OF GENOA

March 14, 2012

A Regular and Organizational meeting of the Town Board of Genoa, Cayuga County, State of New York was held at the Town Hall, 1000 Bartnick Road, Genoa NY on March 14, 2012

Present	Lorie Fessenden, Supervisor	Mick Piechuta, Code Enforcement Officer
	Cheryl Shields, Board Member	Frank Sellen, Highway Superintendent
	Dale Sellen, Board Member (absent)	Mark Conner
	Brandon White, Board Member	Matt Rejman
	Al Armstrong, Board Member	Connie Mather
	Sue Moss, Clerk	Tim Buhl, Engineer

The regular Town Board meeting was called to order at 7:00 p.m. by Supervisor Lorie Fessenden with the Pledge of Allegiance to the Flag.

Resolution 40-2012 APPROVAL OF BILLS

On a motion of Board Member Shields, seconded by Board Member White, the following resolution was ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved to accept presented bills.

REPORTS

SUPERVISOR'S REPORT

Supervisor Fessenden

RESOLUTION 41-2012 APPROVAL OF SUPERVISOR'S REPORT

On a motion of Board Member White, seconded by Board Member Armstrong, the following resolution was

ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved that the February 2012 Supervisor's Report be approved

RESOLUTION 42-2012 APPROVAL OF FUND TRANSFER

On a motion of Board Member Shields, seconded by Board Member Armstrong, the following resolution was

ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved to transfer \$321.74 from Capital Projects to General Fund

CLERK'S REPORT

Report on Revenues from Clerk's Office for February 2012

Dog Licenses	\$ 102.00
Certified Copies	50.00

Disbursements for February

Pd to Supervisor	\$ 152.00
Pd to NYS Ag & Markets	15.00

RESOLUTION 43-2012 **CLERK'S REPORT**

On a motion of Board Member Shields, seconded by Board Member White, the following resolution was ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved that the February 2012 Clerk's Report be accepted

HIGHWAY REPORT

Frank Sellen

In February, the men have applied 129 tons of salt/sand mix to our State roads and 147 tons to our Town and County roads. This amount being about 1/3 of what was used a year ago.

The men have installed two driveway culverts and have been ditching spots that needed it. They've had the plows and sanders in and out a few times trying to haul in between plowing and sanding. Jeff and Matt have been patching on the warm days.

We're hoping to sandblast the bodies and get some paint on them to try and preserve them as long as possible.

Eric had his back operation and seems to be doing better. Sounds like it'll be another 4 to 6 weeks before he's 100%.

Frank has been talking with Evan Shimel, our liaison for the State DOT. He has informed us that the funding for the bridge has been obligated, but the schedule for final construction has been moved to 2014 due to economic issues with the State and Federal Government. This may be a good thing, as there will be more time for detail and payments.

Frank informed the Board that an archeological dig will take place before any bridge work can be done. Years ago, there were 3 mills and a tavern located in the area.

Tim Buhl arrived and spoke to the Board. He is an engineer working on the redistricting of the Town's water district. He showed the Board maps of the area and told them that the parcels and lists now match. The budget was given to Tim so he would know the cost allocated for the redistricting.

ASSESSOR'S UPDATE

None

CODE ENFORCEMENT REPORT

Mick Piechuta

Date: 2/8/12 – 3/14/12

Hours: 35.5
Miles: 111.0

PERMITS ISSUED:

12 – 02	Stonewell Bodies	625 Sills Rd.	Addition
12 – 03	C. Ragusa	632 Bartnick Rd.	Addition

INSPECTIONS:

D. Dean	Powers Rd.	Stonewell Bodies	Sills Rd.
J. Posner	FL# 7	C.Tavelli	840 FL#6
D. Mahanger	FL#1	C. Ragusa	Bartnick Rd.
Joseph Sheldon	3612 Goose St. (Complaint)		

COMMENTS/QUESTIONS/CONCERNS:

- Continue to answer questions from residents concerning permits and building projects and also met and assisted them with filling out applications.
- Checked out complaint on Goose St.
- Met with a resident concerning a lot and area variance.
- Met with a resident and provided a letter to the DOT concerning Auto Recycling Businesses.
- Plan reviews for new construction projects.
- Follow up with a dispute of residents at Clearview.

BUILDINGS AND GROUNDS COMMITTEE

Dave Reeves will be mowing for the Town again this year with no increase in his fee.

WATER REPORT

Mark Conner
February 2012
Total – 1,607,300
Average – 55,400

Mark stated that everything is running well.

Resolution 44-2012 **APPROVAL OF February 8 MINUTES**

On a motion of Board Member Shields, seconded by Board Member White, the following resolution was ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved that the February 8, 2012 be approved.

WATER COMMITTEE REPORT

Mr. Buhl reported to the Board earlier

COMPREHENSIVE PLAN

None

DOG CONTROL REPORT

None

HISTORIAN

None

OLD BUSINESS

The Town Moratorium is at the Town Attorney's office for a 2nd review. It is still not clear if the previous Comprehensive Plan can be used

The water shed that was purchased last year will be used by the Water Department

There has been no response from the DOT

Bids need to be obtained with regard to the cold storage building. Greg Wellott has no interest in taking down the barn. Lorie contacted Randy Nash, a preservationist, but she hasn't received a callback. Connie Mather told the Board there are companies that will take down barns and use the lumber. She will send the names to Lorie.

The GHA has been told that the Town is not responsible for cemeteries in the Town. GHA is looking for the owners of these cemeteries.

The Little League has asked the Town to sign a contract for \$400 to help defray upkeep expenses.

Resolution 45-2012 **RESOLVE TO SIGN CONTRACT WITH LITTLE LEAGUE**

On a motion of Board Member Shields, seconded by Board Member Armstrong, the following resolution was

ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
 Nays 0

Resolved that the Town would sign contract for \$400 to help defray Little League expenses

A meeting was held on March 13 with Geoff Milz, Planner from the Department of Planning and Economic Development for Cayuga County. He spoke with the Town's Variance Board along with Supervisor Fessenden, Board member Armstrong and Code Enforcement Officer Piechuta. There will now be Variance Board documents needed for a variance application. Lorie feels that the appointed Board members should be paid. Their appointments are 5 years in length. The Board members and terms remaining are:

John Fessenden - 2 years

Sue Bower - 4 years

George Nettleton - 1 year

Joe Wargo - 3 years

Stuart Underwood - 5 years and Chairman

Appointment terms established 3/14/12 but are retroactive to 1/1/2012

Resolution 46-2012 **RESOLVE TO PAY VARIANCE BOARD MEMBERS**

On a motion of Board Member Shields, seconded by Board Member White, the following resolution was

ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
 Nays 0

Resolved that the Town would now pay the Variance Board members for their service

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Mr. Scott Thomas (a Town of Genoa resident) asked that his 2 emails to the Town regarding a recent variance approval be published in the Board minutes. They are as follows:

I am troubled by the Board of Appeals meeting that was held last night concerning the lot adjacent to the town barn and wrote this letter to the Town Board for your consideration. I've attached it as a word document for easier handling, but if you don't like to open attachments, I've also copied it below. Thanks for reading.

Scott Thomas
10146 State Route 90
Genoa
607-220-3272

Thursday, December 29, 2011

*Town Board
1000 Bartnick Rd.
Genoa, NY*

Dear Board Members,

I attended the meeting held by the Board of Appeals on December 28, 2011 concerning the variance for the lot adjacent to the town barn. After having stated my objection at the meeting, listening to all sides of the argument, and reviewing the relevant law and tax maps, I cannot help but feel that a mistake was made in voting to grant the variance. I strongly urge the Town Board to confer with the Board of Appeals and Code Enforcement Officer in order to review the minutes of the meeting and assess the reasoning behind the decision. I also ask that the board consider the lack of written consent from the neighbors and the objections expressed by members of the neighborhood. I feel it is the responsibility of the board to ensure the proper interpretation and execution of the town's laws.

Among my concerns are that the appeal failed to meet several standards set by the law and by the Board of Appeals precedent in handling such cases.

I refer the board to Local Law No. 1 of the year 1988.

The law states, in Article III, Section 6, that:

No building used or intended to be used for residential purposes shall hereafter be constructed on a lot unless said lot has a minimum frontage of 150 feet on a public street or on a private roadway.

I urge the board to uphold this section of the law, and deny the variance. The lot in question does not meet this requirement. In addition, the lot is widest at the road, and narrows considerably as it leaves the road.

The same law also states, in Article VI, Section 12, paragraph 1, that:

The Town Board shall appoint a Board of Appeals consisting of five members and shall designate its chairman and set their terms of office.

I ask the board to consider that only four votes were cast at said meeting.

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The same law also states, in Article VI, Section 12, paragraph 5, that:

Upon review of a decision of the Code Enforcement Officer, the Board of Appeals may issue a variance upon a showing by the appellant that strict compliance with the terms of this local law will create undue hardship on the appellant.

And when granting a variance:

That special conditions exist that make compliance with the strict terms of this law impossible or impractical: That the relief sought is the minimal amount necessary to overcome the hardship.

I ask the board to consider and explain how the law has created undue hardship on the appellant. From the statements I heard at the meeting, I understand that the law is an inconvenience to the appellant, but I fail to see any undue hardship created by the law. The appellant is attempting to change the usage of a lot that has not caused them hardship in the past while being used within the limits of the law. If the appellant were to take no action with regards to this lot, it would have no adverse effects and create no hardship. The lot in question is being divided from a much larger lot that includes other areas where a building may be sited and be within the law. The reasons offered by the appellant for not pursuing this course of action included inconvenience and sentimental attachment. I offer that a practical solution is available to the appellant without the need for a variance. I offer that the relief sought is not the minimal amount necessary to overcome the alleged hardship, and is, in fact, more action than what would be needed to address the situation.

I ask the board to detail the special conditions that make compliance with the strict terms of this law impossible or impractical.

From the statements I heard at the meeting, I understand that the person who would reside on the lot already has a home and simply has a desire to move closer to their family. I would note that there are several homes available in the immediate area, for sale and for rent, at a variety of costs, and that housing in the town is generally affordable.

The same paragraph, Article VI, Section 12, paragraph 5, states:

In granting a variance, the Board of Appeals shall determine that the granting of variance is in harmony with the general purpose and intent of this local law and not injurious to the neighborhood or otherwise detrimental to the public welfare

The variance is not in harmony with the intent of the law, which in Article 1, Section 3 states: It is the purpose of this Law to promote the health, safety, and the general welfare of the Town; to secure safety from fire, to provide adequate light and air; to prevent the overcrowding of land; to avoid concentration of population and to insure the purity of ground water.

Granting this variance will not promote the general welfare of the town. According to the recent statement from the Comprehensive Plan Committee, "Genoa survey respondents registered strong positive opinions about the need to revise or develop local laws and land use regulation: [section detailing other factors removed for clarity.] where land use significantly lowers surrounding land values; for effective code enforcement; [.] (over 70%).

The need to revise or develop local laws and land use regulation for: [.] mobile home placement and siting; loss of rural character-scenic views-open space; [.] and for negative visual impacts was supported by over 60% of survey respondents. 58% of respondents indicated they would like the Town to consider land use regulation or zoning."

These survey results indicate that the majority of the town is concerned about the issues surrounding the placement of a mobile home on a noncompliant lot. Genoa is a town with a rich history, which is reflected in the architecture of many of the homes. The placement of a mobile home amid stick built historical homes changes the character of a neighborhood and has the very real potential to lower property values. While there is no law presently in place to prevent this from happening on a compliant lot, it would seem

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to go against public opinion for the board to grant a variance to the law in order to facilitate such a thing. This would seem especially true on the main street of one of the largest hamlets in the town, where this lot is located.

Granting this variance will not prevent, but will contribute to, overcrowding of land. The lot in question is located adjacent to a lot that also fails to meet the road frontage requirement of the law, but was grandfathered in. The board should note that the owner of this adjacent lot (Nathan Bishop) attended the meeting and expressed an objection to the variance. In addition, the board should note that the lot on the other side of Mr. Bishop's lot is also undersized in road frontage and grandfathered in. This indicates that the area is already more crowded than the overcrowding standard set by the law. A variance would contribute to more overcrowding of land. It should also be noted that whether or not the building erected on the lot is a mobile home or stick built, the issue of overcrowding remains.

Granting this variance is also injurious to the neighborhood. Again, see Article VI, Section 12, paragraph 5.

There are five houses in the neighborhood in question. One faces route 34 while the others sit closer together away from the corner on Route 90. This neighborhood is already in a precarious situation when it comes to property values. One of the houses, the rental house on the corner, was for sale for at least three years before finally selling in the last few months. Another was foreclosed upon and sits empty. Another recently acquired a 'for sale by owner' sign and also sits empty. The remaining two houses are each home to a family with young children. The board should note that both of those families attended the meeting and objected to the granting of the variance. While neither family wants to sell, both families would be hard pressed to sell their homes for a competitive price in the current situation. The addition of a mobile home on an overcrowded lot will certainly not make things easier for the families in this neighborhood. It would likely be injurious by further lowering their property values. When these families bought their homes, Local Law No. 1 of the year 1988 was in effect, so they had a reasonable expectation that no home would be built on the lot in question.

The neighborhood also contains the town lots which house the Highway Dept. buildings. I think it is important that the town express an opinion as to the variance. A prominent member of the Highway Dept. stated at the meeting that activities at the town barn are loud and occur at all hours, and that the noncompliant lot in question acts as a buffer to this activity for the adjacent neighborhood. Modifying the lot for a home site would change this situation and adversely affect the neighborhood.

It should be noted that of all the opinions expressed to the board at the meeting, the only ones in favor of the variance were from those who were asking for it. It seemed that the opinions of the rest of the neighborhood were not given the weight they deserve. In previous appeals, written permission for a variance from the neighbors has been acquired. None of the neighbors have given written permission. None have expressed being in favor of the variance. The neighbors that have expressed an opinion are opposed. Those that objected represent nine individuals, including five children, and all the people in the immediate neighborhood who are occupying these homes. The variance was requested in order to allow one individual to live on the noncompliant lot. It seems remarkable that the Board of Appeals would break with precedence and vote to allow a variance considering these circumstances. Given the level of opposition, or even if the situation were evenly divided, it would seem appropriate for the board to stick with the status quo, and not to grant a variance.

I feel the action of the Board of Appeals in voting to allow the variance was inappropriate for all the reasons listed above.

I respectfully request that the Town Board and Code Enforcement Officer refrain from issuing any permits for this lot until the matter can be more thoroughly examined.

I request that the Town Board confer with the Board of Appeals and Code Enforcement Officer in order to review the minutes of the meeting and the reasoning behind the decision.

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I also ask that the board consider the lack of written consent from the neighbors and the objections expressed by members of the neighborhood.

I ask the board to explain how the law has created an undue hardship on the appellant.

I ask the board to explain the special conditions that make compliance with the strict terms of this law impossible or impractical.

I ask the board to consider whether the variance is in harmony with the intent of the law, specifically as that intent relates to promoting the general welfare of the town, overcrowding of land, and whether the variance would be injurious to the neighborhood.

I urge the board to uphold the law as written, and deny the variance.

The citizens of this town depend on the board to ensure the proper interpretation and execution of the town's laws. If a variance is granted based upon the sole position of the requesting party without regard to legitimate opposition, then it seems the law itself has no weight and the Board of Appeals meeting is a mere formality.

I have tried to remain impersonal with this letter, so the board can more easily examine the issues I have raised, but please understand that this decision will greatly affect my family and me. Please understand that our home, besides being the place where we live our lives and raise our children, also represents all of our personal assets. This is not a trivial matter for us.

Thank you for reading and for your consideration. I hope to hear back from you soon.

*Respectfully,
The Thomas family,
Scott, Tamara, Jack, and Hazel Thomas*

*10146 State Route 90
Genoa, NY
607-220-3272*

*Sent: Monday, February 13, 2012 8:11 AM
Subject: Re: Variance*

What the town has done is wrong.

It is wrong for the board of appeals to issue a variance without clear evidence of an undue hardship on the appellant. It is wrong to issue a variance when the appellant has other practical means available to them. It is wrong to go against the intent of the law by contributing to overcrowding of land, especially in a place where overcrowding is already an issue. It is wrong to go against the intent of the law by disregarding the ways in which this action is injurious to the neighborhood, and how it affects the town.

It is wrong to disregard the legitimate complaints of the residents of the neighborhood. It is wrong to support an appellant who showed blatant contempt for the neighborhood in both manner and language at the board of appeals meeting. It is wrong for the town to support the appellant in their attempt to increase the monetary value of their nonconforming lot to the detriment of nearby landowners. It is wrong for the town to put the onus on those in the neighborhood to provide proof of potential injury while at the same time not requiring proof of existing undue hardship from the appellant as directed by the law. It is wrong to pass the responsibility and cost of correcting the town's mistakes onto individual landowners.

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If the precedents you mentioned are truly similar to this case, then perhaps they have been poorly handled in the past as well. I wonder how many of those precedents involved the objection of everyone living in the immediate neighborhood. A law that can be broken by simply asking permission is not a law. It is a travesty. In these cases, the town's role is to consider the general welfare of the town, as is specifically noted in the law itself. It is not the town's role to be as accommodating as possible to anyone requesting a variance. Granting a variance should only be done when defined standards are met. The onus is on the appellant to show that those standards are met, and that the intent of the law is not being violated. Granting a variance should not be done simply because their aren't enough subjectively valued reasons not to grant it. The law itself, and its intent, are the reasons for not granting a variance. Since the appellant did not meet the standards spelled out in the law, the mandatory 150' lot width that the law intended to prevent overcrowding of land, on its own, should have been enough to deny the variance. The decision to grant the variance is the exact opposite of the intent of the law because it will clearly contribute to overcrowding instead of preventing it.

The law is there for a reason, which is to protect the citizens of this town. When there is a conflict between citizens, the law should stand as written and fulfill its purpose. Granting a variance to the law precisely when it is most needed to protect citizens is not only wrong, but outrageous. The residents of this neighborhood did nothing to the appellant that required the law for her protection. However, the appellant is taking action that is injurious to the residents of this neighborhood. These residents need the law to protect them. The town has chosen to disregard the law, rather than protect its citizens. Unbelievable. The town has utterly failed in carrying out not only the law, but also a reasonable solution, and simply what is right.

This decision has been injurious to the citizens of this neighborhood, whether the town chooses to acknowledge that or not. You are correct that revamping of the variance procedure is of no consolation to my family. The very nature of the injury to the neighborhood affects my ability to sell my home and move away from this intolerable situation. I recognize that some members of the town government have tried to set things right. I also recognize your attempts to deal with this situation by consulting the town's attorney. However, while this may satisfy the town board's concerns, the problems for the residents of the neighborhood remain. My house has gone from being a home to being a liability.

This situation makes it difficult for me to explain to my children that we need to do the right thing, obey the law, and be respectful of others. Here, they can see for themselves that when others sidestep the law and act without consideration, not only does it benefit them, but it is supported by our local government. I suppose that is no less ironic than writing a letter to that same government which I expect will have no effect.

Scott Thomas

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Lorie mentioned the new "Open Meeting Law" which pertains to town board meetings. It is to help make the residents more aware of goings-on with NYS towns and to make town board meetings transparent. The Board agreed that generic meeting agendas will be posted at the Town Garage and the 2 post offices. It will also be stated that for more up-to-date and specific information, residents may go to the Town's website.

Moratorium Committee member appointments are as follows:

David Stillwell
Maria Bachich
Tom Meyers
Peter Saltonstall
Joanne Baum
Bill Hecht (non-resident of Genoa)
Dana Mandel
Sally Klinge
John Gloss
Connie Mather

Additional members as needed and will be appointed at specific board meetings in the future

Resolution 47-2012 **RESOLVE TO APPROVE MORATORIUM COMMITTEE MEMBERS**

On a motion of Board Member White, seconded by Board Member Shields, the following resolution was ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White
Nays 0

Resolved that the Town would approve the Moratorium Committee members

Lorie asked Frank if he thought the medical equipment at the Town Garage is up-to-date. He said yes. The GHA would like new toilets installed at the Museum. The holding tank has to be pumped quite often. Bob Foltz sent an email to Lorie stating that 1 of the 2 restrooms will be closed and that the other one has new tank parts.

The Town has decided to keep the crusher. There was some interest from a Town resident in purchasing it.

NEW BUSINESS

Lorie took a trip to Pennsylvania to visit a site with hydraulic fracturing. She said the traffic was horrendous.

The Town received a letter from Southern Cayuga Instant Aid. The letter suggested that the Towns of Genoa, Ledyard, Scipio and Venice obtain their own funding and form a new ambulance district. The Town Boards are opposed to this.

The Town received a letter from Pickard & Anderson regarding the Genoa landfill monitoring scheduled for July, 2012. They will let Frank know the exact date.

The Town of Genoa annual financial report was filed with the State on March 11, 2012.

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Resolution 48-2012 **RESOLVE TO EXECUTE THE BRIDGE AGREEMENT WITH NYS**

On a motion of Board Member Shields, seconded by Board Member White, the following resolution was

ADOPTED Ayes 4 Fessenden, Shields, Armstrong, White

Nays 0

Resolved that the Town would execute the bridge agreement with the State

With no further business, on a motion of Board Member Shields, seconded by Board Member White, the regular meeting was adjourned at 8:30 p.m. Carried unanimously

Susan B. Moss, Town Clerk