

BYRON TOWN BOARD MEETING

December 10, 2008

The Byron Town Board Meeting was called to order by Supervisor Felton 7:00 p.m. with the following people present:

Supervisor.....Thomas Felton
Council Members.....Craig Ferguson
Jeanne Freeman
Highway Superintendent.....George Heins
Town Clerk.....Debra Buck-Leaton

Absent:
Council Member.....John Ivison

Public:
Everett Roda.....Rte. 237, Byron
Mickey Truax.....Swamp Road, Byron
Brian Forsyth.....Gillett Road, Byron
Jim Cudney.....Rte. 237, Byron
Dale and Elaine Tucker.....Bank Street Road, Byron
Jessica Dodson.....Rte. 237, Byron
John Sackett.....Townline Road, Byron
Bob Cudney.....6209 N. Byron Road, Byron
David VanSlyke.....P.O. Box 421, Byron
Matt Campbell.....N. Bergen Road, Byron
Dale Pickett.....Caswell Road, Byron
Pete Yasses.....Rte. 237, Byron
Bill and Barb Emerson.....Terry Street, Byron
David Chupp.....Tripp Road, Byron

PLEDGE TO THE FLAG:

Supervisor Felton led the people in attendance in the Pledge of Allegiance.

MINUTES:

A **motion** was made by Councilman Ferguson to approve the Byron Town Board Minutes of November 12, 2008 as written. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

A **motion** was made by Councilwoman Freeman to open the Public Hearing at 7:02 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

**PUBLIC HEARING
TOWN OF BYRON
LOCAL LAW NO. 1 OF 2008**

PLEASE TAKE NOTICE that the Town Board of the Town of Byron will hold a Public Hearing at 7:00 p.m. on Wednesday, December 10, 2008, at the Byron Town Hall, 7028 Rte. 237, Byron, New York, to hear all persons present regarding the proposed adoption of Local Law No. 1 of 2008 entitled Town of Byron Outdoor Solid Fuel Furnace Law. This proposed local law will control and regulate outdoor wood burning furnaces.

Copies of the proposed local law will be available at the offices of the Town Clerk during her regular business hours.

By Order of the Town Board of the Town of Byron
Debra Buck-Leaton, Town Clerk

**PROPOSED
LOCAL LAW NO. 1
OF 2008
OUTDOOR SOLID FUEL BURNING FURNACES
TO BE ADDED TO THE
CODE OF THE TOWN OF BYRON**

1. Purpose.

It is generally recognized that the types of fuel used, and the scale and duration of burning by outdoor solid fuel burning furnaces, can create noxious and hazardous smoke, soot, fumes, odors and air pollution, which can be detrimental to citizens' health, and can deprive neighboring residents of the enjoyment of their property or premises. Therefore, with the adoption of this local law, it is the intention of the Town Board of the Town of Byron to establish and impose restrictions upon the construction and operation of outdoor solid fuel burning furnaces within certain areas of the Town for the purpose of securing and promoting the public health, comfort, convenience, safety and welfare of the Town and its inhabitants.

2. Definitions.

As used in this local law, the following terms shall have the meanings indicated:

OUTDOOR SOLID FUEL BURNING FURNACE - An accessory structure, designed and intended, through the burning of any solid fuels, including but not limited to wood, coal, trash, plastic, particle board, yard wastes and paper products, for the purpose of heating or providing energy to a principal structure, or any other building, site or structure on the premises on which the said accessory structure is located.

VIOLATOR or ANY PERSON WHO VIOLATES ANY PROVISION OF THIS LOCAL LAW - Any person who owns or occupies the property at any time an outdoor

solid fuel burning furnace is installed or operated under circumstances not permitted under this local law.

3. Authority; enforcement.

- A. This local law is adopted pursuant to the authority of Article 2, § 10 of the New York State Municipal Home Rule Law.
- B. The Town of Byron Code Enforcement Officer, or any other person who may hereafter be designated by resolution of the Byron Town Board, is hereby authorized in the name and on behalf of the Town of Byron to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this local law.

4. Construction and operation prohibited.

The installation, construction and operation of outdoor solid fuel burning furnaces are hereby prohibited within areas defined by the Town of Byron Zoning Ordinance and/or the Town of Byron zoning map as they may be adopted and amended from time to time by ordinances and/or local laws enacted by the Town Board of the Town of Byron and designated as zoning districts 1.) residential (R1), 2.) limited commercial (C1), and 3.) general commercial (C2), other than those installed and operational prior to December 10, 2008, subject to the provisions of Section 6 below.

5. Penalties for offenses.

- A. Any person who shall violate any provisions of this local law shall be guilty of a violation as defined in Article 10 of the New York State Penal Law, and shall, upon conviction, be subject to a fine of not more than \$150.00 for the first offense. The punishment for the second offense shall be a fine of not more than \$300.00, and for a third or subsequent offense a fine of not more than \$500.00 or imprisonment for not more than 15 days, or both such fine and imprisonment. Each week's continued violation after notice of such violation is sent to the owner or occupant by the said Code Enforcement Officer shall constitute a separate and distinct offense. Such notice shall be sent to the owner or occupant by first class mail, and proof that such notice was sent and not returned to the sender as undelivered shall create a rebuttable presumption that it was duly received by the addressee.
- B. Any person who violates any provision of this local law shall also be subject to a civil penalty of not more than \$500, to be recovered by the Town in a civil action. Each week's continued violation shall be, for this purpose also, a separate and distinct violation.
- C. Compliance with this local law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction.

- D. In the event the Town is required to take legal action to enforce this local law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by a Court. If such expenses are not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be assessed against the real property on which the offending furnace is located, and then levied in the next annual town tax levy against the property.

6. Nonconforming uses.

- A. Except as hereinafter provided, the lawful use of any outdoor solid fuel burning furnace existing at the time of the original introduction of this local law (December 10, 2008) may be continued, although such use does not conform with the provisions of this local law, until April 30, 2010, except as hereinafter provided for in Subsections B, C, E and F.
- B. Any outdoor solid fuel burning furnace pre-existing within the Town of Byron at the time this Local Law becomes effective must be installed and operated in full compliance with its manufacturer's recommendations. If any such furnace is not in compliance with such recommendations the owner or operator thereof shall bring the said furnace into full compliance within thirty (30) days of the effective date hereof. After said thirty (30) days any such furnace not in compliance shall lose its status as a pre-existing non-conforming use, and a court of competent jurisdiction may order its disassembly and removal in a proceeding brought by the Byron Code Enforcement Officer against the owner or owners of the premises on which such furnace is located.
- C. Any such pre-existing outdoor solid fuel burning furnace must be installed no closer than fifteen (15) feet from any of the property lines of the premises on which it is located, and no closer than three hundred (300) feet from any residence located on any [adjacent] property in the same neighborhood. Also the exhaust or smoke stack on any such pre-existing furnace must extend to a height at least five (5) feet higher than the highest point on the roof line of any residence located on any [adjacent] property within three hundred (300) feet of such furnace location.
 - (1) The owner or operator of such outdoor wood-burning furnace shall also be in violation of this local law if the smell of the smoke or exhaust from his or her use thereof can be detected inside any residence within three hundred (300) feet of the parcel of property upon which the same furnace is installed. If a complaint about such smoke or exhaust smell is made to the Code Enforcement Officer, he or she shall investigate the complaint as soon as practical. This may involve the Code Enforcement Officer contacting the NYS Department of Conservation or other qualified professional, and if he or she detects the smell of exhaust smoke in the place where the complainant is complaining of, the said Code Enforcement Officer shall immediately order the owner or operator of the offending furnace to shut down its operation. If the owner or operator of the said furnace requests a second opinion as to the detectability of such smoke or exhaust aroma in a neighboring residence, any NYS Department

of Conservation official or other qualified professional may be dispatched at the request of the Code Enforcement Officer to verify or deny the detectability of said smell. If such second opinion is sought it shall be controlling to determine the issue.

- D. The only fuels allowed to be burned in pre-existing outdoor solid fuel burning furnaces within the Town of Byron are those fuels recommended by the manufacturers thereof; but in no case shall any of the following be burned in such furnaces:
- (1) trash;
 - (2) plastics;
 - (3) gasoline;
 - (4) tuber;
 - (5) naphtha;
 - (6) household garbage;
 - (7) particle board;
 - (8) railroad ties;
 - (9) pressure treated wood;
 - (10) leaves and yard waste
 - (11) paper products;
 - (12) cardboard
- E. No outdoor solid fuel burning furnace within an R1, C1 or C2 zone existing at the time of the adoption of the local law shall thereafter be replaced, extended or enlarged.
- F. Any existing outdoor solid fuel burning furnace which is abandoned or discontinued for a period of ten (10) consecutive months shall not be permitted to be reestablished as a nonconforming use, and must be immediately removed by the property owner from the subject premises.
- (1) If the property owner fails to remove the outdoor solid fuel burning furnace by the end of the said ten (10) consecutive month period, the Town of Byron Code Enforcement Officer shall give written notice by certified mail or personal service to the owner or occupant of the property upon which the outdoor solid fuel burning furnace is located. Such notice shall provide that said owner or occupant shall remove the outdoor wood burning furnace within fifteen (15) days of the date the notice is either postmarked or personally served upon the owner.
 - (2) Should the outdoor wood burning furnace not be removed within the time specified, the Code Enforcement Officer shall take such steps as are necessary to enforce this local law including, but not limited to, the issuance of an appearance ticket alleging the violation hereof and proceed as provided in Section 5 above.

7. Severability; when effective.

- A. The provisions of this article are severable and the invalidity of a particular provision shall not invalidate any other provisions.

B. This Local Law shall take effect immediately upon its filing in the Office of the New York Secretary of State.

Public Comments:

John Sackett: This is an economical way of heating a house. This law is subjective, not objective. If a neighbor has a problem with you and you have one of these furnaces, they could use it against you even if it's properly installed. The Town Board is not interested in the freedom of people.

Dale Pickett: Shouldn't the law include the burning of tires? Some furnaces do not smoke, he doesn't know which ones. He believes this law is necessary

Supervisor Felton: To Mr. Sackett's point, there are two reasons the Town Board is considering this local law: public health and aesthetics. There have been problems and law suits in other towns, which the Town of Byron is looking to prevent. Looking to prevent such problems in higher density population areas. The DEC is working on open burning law which will prevent anyone from burning anything outside of their homes. He believes burning tires is illegal. Therefore, it wouldn't need to be included in this law.

Dale Tucker: Demonizes outdoor furnaces. Law should contain facts, not opinions. He believes it should only contain facts. Have there been any complaints in the Town? He believes everyone needs to be treated fairly. Fireplaces and wood burning stoves are not regulated. He believes the law has a lot of holes in it, and is written poorly. We should be encouraging outdoor wood burners.

Supervisor Felton: Where we see these problems are in residential areas, not in rural areas. The areas mostly include the hamlets of Byron and South Byron. The number of outdoor solid fuel burners in the Town continues to increase.

A **motion** was made by Councilwoman Freeman to close the Public Hearing at 7:28 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

PROPOSED LOCAL LAW NO. 1 OF 2008-OUTDOOR SOLID FUEL FURNACE LAW

RESOLUTION #106:

Councilman Ferguson offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board approves the passage of Local Law No. 1 of 2008-Outdoor Solid Fuel Furnace Law, to include 15 foot and 300 foot setbacks from property lines.

Councilwoman Freeman seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

Councilman Ferguson: Should the Town be responsible for the cost of having the Code Enforcement Officer going to a home for a complaint?

Supervisor Felton: There is a fee for this in the fee schedule, it would probably be considered an inspection fee.

TOMPKINS INSURANCE – Tim Spezzano:

·Gave an overview of the Town of Byron’s insurance coverage and costs

PLANNING BOARD REPORT –Supervisor Felton:

·Have not had any Planning Board matters pending so they have worked on the Comprehensive Plan update.

COMPREHENSIVE PLAN UPDATE:

·Meet the third Tuesday of each month from 7:00 – 8:00 p.m. Anyone is welcome to attend.

A **motion** was made by Councilman Ferguson to approve the Planning Board Report as given. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

HIGHWAY SUPERINTENDENT’S REPORT – George Heins:

·Winter maintenance
·Working on a few projects in the shop
·George and Councilman Ferguson will be working together to look at options for the Highway garage. Councilman Ferguson will also be reaching out to members of the public that might be interested in helping to find a solution.

A **motion** was made by Councilwoman Freeman to approve the Highway Report as given. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

WASTE WATER REPORT:

·Took weekly samples
·Took monthly samples
·Monthly reports
·Installed new pump in Central Byron filter lift station
·Changed lab
·Checked all pumps for operation
·Created new check sheets
·Took meter readings
·Called in on 11/11/08 for high level alarm, changed high level float
·Called in 12/06/2008 for sewage back-up in a residential house, Operator responded and it was determined that the clog was in her line

Future Projects:

·Inventory

- Replace pumps
- Continue preventative maintenance program

REMOVAL OF PETER YASSES FROM SEWER DISTRICT

RESOLUTION #107:

Councilwoman Freeman offered the following resolution and moved for its adoption:

WHEREAS, the Town of Byron has determined that tax parcel number 7-1-20, which is in the current sewer district, does not have adequate infrastructure to allow this parcel to be attached to our current Sewer system, and

WHEREAS, the current owner has installed a restroom in the facility with an accompanying septic system, it is hereby

RESOLVED, that the Town of Byron agrees not to oppose the release of tax parcel number 7-1-20 from the Sewer District with the following conditions:

1. The septic system located on property is approved by either a qualified engineer or Genesee County Health Department.
2. At any time the Town extends the Sewer District to include this parcel, the owner agrees to hook up to the Sewer system. This will require the property owners to pay their portion of any debt service and Operating & Maintenance for said system in the future.
3. All existing easements on said parcel shall remain in full force and effect.
4. All costs to remove this parcel from the existing Sewer District shall be borne by the current owner of the parcel.

Councilman Ferguson seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

A **motion** was made by Councilman Ferguson to approve the Sewer Department Report as written. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

CEO/ZEO REPORT:

- Number of Inspections: 22
- Number of Zoning Permits: 4
- Number of Building Permits Issued: 8
- Number of Land Separations: 1
- Number of Building C.O./C.C. Issued: 8
- Number of Zoning Complaints Filed: 0
- Number of Zoning Complaints Resolved: 1
- Total Hours for the Month: 93

- Continue to focus on yearly fire and maintenance inspections for Assembly Group A

- Performing daily inspections on open permits
- Completing NYS Annual Local Code Administration and Enforcement Report
- Following up on code violations

A **motion** was made by Councilman Ferguson to approve the CEO/ZEO report as written. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

PARK COMMITTEE REPORT – Supervisor Felton:

- Ice skating rink has been installed, just waiting for the water to freeze
- Candy bar fundraiser
- Decorated gazebo at the park
- Building storage shed adjacent to restroom with Dib Nightinggale Funds, and will be putting up a plaque in honor of Dib
- Started work on the pavilion at Trestle Park

A **motion** was made by Councilman Ferguson to approve the Park Committee report as given. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

ABSTRACTS
RESOLUTION #108:

Councilwoman Freeman offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board pay the following abstracts:

<u>Fund:</u>	<u>Abstract:</u>	<u>Vouchers:</u>	<u>Amount:</u>
General Fund	#12	#271 - #291	\$16,432.17
Highway Fund	#12	#166 - #174	\$32,328.33
Sewer Fund	#12	#99 - #107	\$ 5,865.58
Salt Barn Fund	#PA-1	#1	\$21,776.05
General Fund	#PA-18	#69 - #73	\$38,065.45
Highway Fund	#PA-5	#5	\$16,353.15
Sewer Fund	#PA-9	#18 - #19	\$ 5,150.29
Risk Retention	#1	#1	\$21,412.00

Councilman Ferguson seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

TOWN CLERK’S REPORT:

Paid to the Genesee County Treasurer for Dog Licenses.....	\$ 156.27
Paid to the NYS Ag and Markets for spay/neuter program.....	\$ 195.00
Paid to the NYS Environmental Conservation.....	\$ 787.06
Paid to the Town of Byron Supervisor.....	<u>\$2,806.27</u>
Total Disbursed for November 2008.....	\$3,944.60

A **motion** was made by Councilman Ferguson to approve the Town Clerk's Report as given for November 2008. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

FINANCIAL REPORT:

·The financial reports were reviewed for November 2008.

A **motion** was made by Councilwoman Freeman to approve the November 2008 Financial Reports as given. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

OTHER BUSINESS:

REPAIR OF COURTROOM ROOF – COST OVERAGE

RESOLUTION #109:

Councilwoman Freeman offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board authorizes the cost overage of \$301.00 for the repair of the courtroom roof by T.W. Johnson Construction.

Councilman Ferguson seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

FIRE CONTRACTS:

·Fire contracts have been signed by all Town Board members and sent to both Presidents of the Fire Departments for their review and signatures.

EXTENSION AND MODIFICATION OF INTER-MUNICIPAL AMBULANCE AGREEMENT

RESOLUTION #110:

Councilman Ferguson offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board authorizes Supervisor Felton to execute all documents necessary for the Extension and Modification of the Inter-Municipal Ambulance Agreement with the City of Batavia.

Be It Further Resolved, that the Byron Town Board approves the expenditure of \$3,607.44 for the service fee in connection with the Extension and Modification of the Inter-Municipal Ambulance Agreement with the City of Batavia.

Councilwoman Freeman seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

END-OF-YEAR MEETING:

A **motion** was made by Councilwoman Freeman to set the end-of-year meeting of the Town Board for Tuesday, December 30, 2008 at 4:30 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

2009 ORGANIZATIONAL MEETING:

A **motion** was made by Councilwoman Freeman to hold the 2009 Organizational Meeting on Friday, January 2, 2009 at 4:30 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 3 Nays: 0

TOWN HALL/HIGHWAY GARAGE PHONE SYSTEM:

·Phone service will be changing from AT&T to Time Warner, and we will hopefully see a significant savings.

**APPOINTMENT OF TOWN BOARD MEMBER FOR ONE YEAR TERM
RESOLUTION #111:**

Councilman Ferguson offered the following resolution and moved for its adoption:

Resolved, that the Byron Town Board hereby appoints Jack Redick to the Byron Town Board to complete the term vacated by Supervisor Felton, which ends December 31, 2009.

Councilwoman Freeman seconded the resolution which was adopted by the following vote:

Vote: Ayes: 3 Nays: 0

PUBLIC COMMENTS:

John Sackett: Insurance coverage should be put out to bid. Deductible should be around \$10,000. Lights should be a separate district. Byron Kiwanis put in cement at tennis courts years ago. When he was Supervisor the financial reports would be read out loud.

Supervisor Felton: Maybe a one page handout could be done for the public for each Board meeting regarding financial reports.

SUPERVISOR’S REPORT:

- The next GAM meeting will be in Alabama on December 18th
- January 29th will be Farmland Protection seminar
- Received last mortgage tax payment for the year
- Meeting with Elba and Bergen Supervisors/Town Board members to see how the Towns can work together to share services/assets

A **motion** was made by Councilman Ferguson to accept the Supervisor’s Report as given. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

ADJOURN:

A **motion** was made by Councilman Ferguson to adjourn the Byron Town Board Meeting at 8:25 p.m. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 3 Nays: 0

Respectfully Submitted,

Debra M. Buck-Leaton
Byron Town Clerk