

BYRON TOWN BOARD MEETING

September 10, 2008

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

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

Public:

| | |
|----------------------------|---------------------------|
| John Sackett..... | 6548 Townline Road, Byron |
| Everett Roda..... | Rte. 237, Byron |
| Mickey Truax..... | Swamp Road, Byron |
| Jim Cudney..... | 7072 S. Byron Road, Byron |
| David Chupp..... | Tripp Road, Byron |
| Bill and Barb Emerson..... | Terry Street, Byron |
| Brian Forsyth..... | Gillett Road, Byron |

Invited Guests:

Eric Wies, Clark Patterson Associates

PLEDGE TO THE FLAG:

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

MINUTES:

A **motion** was made by Councilman Ivison to approve the Byron Town Board Minutes of August 13, 2008 as written. The motion was seconded by Councilman Felton and carried with the following vote:

| | | |
|-------|---------|---------|
| Vote: | Ayes: 5 | 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, September 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

A **motion** was made by Councilman Ivison to open the Public Hearing at 7:04 p.m. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

John Sackett: #6(B) Nonconforming uses – he believes the wording needs to be changed. (C) his son uses his outdoor furnace to heat hot water all year round. (D) There is no Town of Byron Police Department. Last sentence-If such second opinion is sought it shall be controlling to determine the issue. – Just need to make sure it doesn't offend neighbors. (F) After they expend their life span they can't be replaced? He believes maybe someone local should write a local law or ordinance.

Councilman Ferguson: Agrees with some aspects of what John Sackett has said. He does not disagree with controlling it for neighbors and who it may affect. He does worry about debris collected around these furnaces and what people will be burning. Some of this stuff does need to be looked at. He does not agree with everything in the proposed law, but does believe some regulations need to be made.

Councilman Ivison: Believes the Town should do a moratorium, not have a local law.

Councilman Felton: Believes this is a good start to open the door to begin addressing the problem. He feels that the DEC regulations will make this a mute point in the near future anyways.

Supervisor Chapell: Believes this should be sent to the Planning Board and the wording cleaned up. He believes we should table the passage of this law until further investigation has been done.

Jim Cudney: Can you put a scrubber on the outdoor furnaces?

Councilman Felton: He believes you could burn anything in these furnaces and that's what scares him.

**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, creates noxious and hazardous smoke, soot, fumes, odors and air pollution, 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 the limits of the Town for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity 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 the Town of Byron, unless said furnace is located at least 300 feet from the property line of the property on which the furnace is located, other than those installed and operational prior to September 10, 2008.

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 charged to the property so affected by including such expense 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 (September 10, 2008) may be continued, although such use does not conform with the provisions of this local law, until April 30, 2010.*
- 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 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 may be operated and used only between September 30 and April 30 of the winter heating season.*
- D. *Any such pre-existing outdoor solid fuel burning furnace must be installed no closer than [twenty (20) feet] 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 [five hundred (500) feet] 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 [five hundred (500) feet] 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, 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 on-duty police officer of the Town of Byron Police Department 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.*
- E. *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) *naptha;*
 - (6) *household garbage;*
 - (7) *particle board;*
 - (8) *railroad ties;*
 - (9) *pressure treated wood;*
 - (10) *leaves and yard waste*
 - (11) *paper products;*
 - (12) *cardboard*
- F. *No outdoor solid fuel burning furnace existing at the time of the adoption of the local law shall thereafter be replaced, extended or enlarged.*
- G. *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 any steps reasonably necessary to effect its removal, and shall bill the costs thereof, if any, to the owner or occupant of the premises, as provided below.
- (3) The costs incurred by the Town to effect said removal (including any attorney's fees incurred by the Town to effect the removal), plus an amount equal to 50% of said costs of removal, shall be charged to the owner of said premises. Said expense shall be paid by the owner or occupant of the property so affected within thirty (30) days from the date said costs are presented to the owner. If said expenses are not paid within said thirty (30) day limit, then said expense shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

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.

A **motion** was made by Councilman Ivison to close the Public Hearing at 7:21 p.m. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilman Ivison to approve the Proposed Local Law No. 1 of 2008 – Outdoor Solid Fuel Burning Furnaces to be Added to the Code of the Town of Byron. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 0 Nays: 5

WATER DISTRICT NO. 2:

PAYMENT FOR LATERAL CONNECTION ASSISTANCE GRANTS

RESOLUTION #87:

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

Resolved, that the Byron Town Board agrees to approve the payment of 4 vouchers totaling \$6,920.23 for lateral connections for Water District No. 2.

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

Vote: Ayes: 5 Nays: 0

WATER DISTRICT NOS. 3, 4 AND 5:

·Water District Nos. 3 and 4 water samples came back negative for ecoli and other bacteria.

- The Town has not received a petition for Swamp Road yet.
- Water Districts Nos. 5 and 6: The water authority would like to see the district looped because of water quality issue involved with dead ending.
- Water District 5 would include Warboys east to Merrill, Merrill to N. Bergen, and west N. Bergen to 237
- Water District 6 would include N. Bergen from Merrill, Warboys from Merrill and Sautell Roads
- Eric Wies would recommend setting up a public informational meeting for Districts 5 and 6 to see if they wanted the Town to go to the next step.

PLANNING BOARD REPORT –Councilman Felton:

·Met on September 2nd. Discussed a land separation and outdoor wood furnaces

A **motion** was made by Councilman Ivison to accept the resignation of Albertus Vanwyngaarden, Zoning Board of Appeals member, effective September 1, 2008, with regret. The motion was seconded by Councilman Felton and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilman Felton to appoint Jeffrey Cook as a permanent member of the Zoning Board of Appeals. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilwoman Freeman to appoint Chad Huhn as an alternate member of the Zoning Board of Appeals. The motion was seconded by Councilman Ivison and carried with the following vote:

Vote: Ayes: 5 Nays: 0

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

Vote: Ayes: 5 Nays: 0

HIGHWAY SUPERINTENDENT’S REPORT – George Heins:

- Mechanic Street has been blacktopped
- Salt has been delivered

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

Vote: Ayes: 5 Nays: 0

CEO/ZEO REPORT:

- Number of Inspections: 27
- Number of Zoning Permits: 5
- Number of Building Permits Issued: 4
- Number of Land Separations: 2
- Number of Building C.O./C.C. Issued: 1
- Number of Zoning Complaints Filed: 2
- Number of Zoning Complaints Resolved: 5
- Total Hours for the Month: 88

A **motion** was made by Councilman Felton to appoint Scott Flagler as the Deputy CEO/ZEO at a rate of \$20.00 per hour. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

·A second letter was sent to Teamco Corporation for the cleanup cost of 6657 Cole Road with no response. The Town can now relevy the \$425.00 bill onto Teamco’s 2009 Town/County taxes.

LEVYING UNPAID PROPERTY SERVICE CHARGE AGAINST 2008 TAX WARRANT

RESOLUTION #88:

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

WHEREAS, the Town of Byron incurred costs in August 2008 to clean up the property located at 6657 Cole Road; and

WHEREAS, the costs incurred was \$425.00 for Becker Excavating & Construction’s service; and

WHEREAS, the owner, Teamco Corporation, 593 West Broad Street 195, Rochester, New York 14608, was billed for this service by the Town, but never received payment.

NOW, THEREFORE BE IT RESOLVED, that the amount of \$425.00 be submitted to the Genesee County Treasurer, and is hereby approved for levying against the aforementioned 2008 tax warrant.

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

Vote: Ayes: 5 Nays: 0

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

Vote: Ayes: 5 Nays: 0

ABSTRACTS

RESOLUTION #89:

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 | #9 | #193 - #217 | \$ 9,937.66 |
| Highway Fund | #9 | #124 - #136 | \$ 62,117.05 |
| Sewer Fund | #9 | #75 - #85 | \$ 2,548.28 |
| General Fund | #PA-14 | #46 - #50 | \$ 2,718.41 |

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

Vote: Ayes: 5 Nays: 0

TOWN CLERK'S REPORT:

| | |
|-----------------------------------------------------------------|-------------------|
| Paid to the Byron Park Committee for Park Rental..... | \$ 30.00 |
| Paid to the Genesee County Treasurer for Dog Licenses..... | \$ 50.52 |
| Paid to the NYS Ag and Markets for spay/neuter program..... | \$ 15.00 |
| Paid to the NYS Environmental Conservation..... | \$2,410.16 |
| Paid to the NYS Department of Health for Marriage Licenses..... | \$ 67.50 |
| Paid to the Town of Byron Supervisor..... | <u>\$3,506.95</u> |
| Total Disbursed for August 2008..... | <u>\$6,080.13</u> |

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

Vote: Ayes: 5 Nays: 0

FINANCIAL REPORT:

·The financial reports were reviewed for August 2008.

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

Vote: Ayes: 5 Nays: 0

OTHER BUSINESS:

COMPREHENSIVE PLAN:

·Next meeting will be on Tuesday, September 16th.

SALT BARN ROOF UPDATE:

·Shingling has been completed.

BUDGET:

·Would like to set a special budget meeting for Wednesday, September 17th at 7:30 p.m., and Wednesday, September 24th at 7:00 p.m.

PUBLIC COMMENTS:

Mickey Truax: He would like to thank the Town for stopping the tractor trailers from using Swamp Road.

SUPERVISOR’S REPORT:

·Jeff Smith from Municipal Solutions will attend the NYS Department of State Local Government Efficiency Grant Program if the Town is interested in any information from that program.

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

Vote: Ayes: 5 Nays: 0

EXECUTIVE SESSION:

A **motion** was made by Councilman Ferguson to adjourn to executive session at 8:30 p.m. to discuss a personnel matter. The motion was seconded by Councilwoman Freeman and carried with the following vote:

Vote: Ayes: 5 Nays: 0

A **motion** was made by Councilman Felton to come out of executive session at 9:00 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

ADJOURN:

A **motion** was made by Councilman Ivison to adjourn the Byron Town Board Meeting at 9:03 p.m. The motion was seconded by Councilman Ferguson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

Respectfully Submitted,

Debra M. Buck-Leaton
Byron Town Clerk