

A public hearing was held by the Town Board of the Town of Moreau on December 14, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of receiving public comment on proposed Local Law No. 5 of 2010, which if adopted would repeal and replace Article III "Notification of Defects" of Chapter 121 "Streets and Sidewalks" of the Moreau Town Code with a new Article III "Notice of Defects".

Supervisor Jenkins opened the public hearing at 6:40 p.m.

The Town Clerk called the roll.

**Town Board Members Present**

Tom Cumm	Councilman
Bob Prendergast	Councilman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

**Town Board Members Absent**

Gina LeClair	Councilwoman
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**Also present:** Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector/Code Enforcement Officer; Steve Gram, Recreation Director; Paul Joseph, Highway Superintendent; Jesse Fish, Water Superintendent; Nick Mattison, Recreation Department Laborer; Lydia Wheeler, Post Star Reporter; Martin D. Auffredou, Esq., Attorney for the Town; Keith Osborne, Planning Board Member; and Vince Sporrer, Town Resident

The following Notice of Public Hearing was advertised in the legal ad section of the Glens Falls Post Star Newspaper on December 6, 2010:

TOWN OF MOREAU  
NOTICE OF PUBLIC HEARING  
TO CONSIDER ADOPTION OF  
LOCAL LAW NO. 5 OF 2010

NOTICE IS HEREBY GIVEN pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, that a public hearing will be held by the Town Board of the Town of Moreau on Tuesday, December 14, 2010 at 6:45 p.m. at the Town Hall, located at 61 Hudson Street, South Glens Falls, New York for the purpose of considering the adoption of Local Law No. 5 of 2010. If adopted, Local Law No. 5 of 2010 would repeal and replace Article III "Notification of Defects" of Chapter 121 "Streets and Sidewalks" of the Moreau Town Code with a new Article III "Notice of Defects". The Local Law provides generally, and consistent with Section 65-a of the New York State Town Law, that no civil action can be maintained against the Town for injuries sustained by reason of any defective streets, sidewalks, bike paths or parking lots by reason of the existence of snow or ice on any highway, bridge, street, sidewalk, etc. unless written notice of the defect or unsafe condition has been provided to the Town Clerk and there was failure or neglect by the Town to remove the unsafe condition or to remove snow or ice within a reasonable amount of time following receipt of the notice. A copy of proposed Local Law No. 5 of 2010 can be obtained at the Moreau Town Hall.

Jeanne Fleury, Town Clerk

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Attorney Auffredou began by explaining that the Town of Moreau has a law on the books in the Town Code and the authority for this law arises out of Section 65-a of the Town Law. It was thought that with all that the Town has going on with all of their bike paths, sidewalks, parking lots, foot paths, recreation fields, etc... that this Notice of Defects Law could be broadened pursuant to section 65-a of Town Law to include these areas. It expands upon the law currently on the books and it talks about prior notice of dangerous conditions or defects being given to the Town before an action can be made against the Town for any injuries that are caused as the result of those defects or dangerous conditions. He discussed this law with Joe Patricke and they thought that the current law could be updated and that section 65-a of the Town Law is a little stronger than the Town's current law and that the current law could be expanded to include additional areas, such as, bike paths, sidewalks and things of that nature that aren't in the current law. He said this is the intent behind making the revisions and repealing the current law and replacing it with Local Law No. 5 of 2010. He was absolutely convinced that the Town's insurance company will appreciate the enactment of this local law.

Councilman Cumm asked if this law would cover the Recreation Park and beach.

Attorney Auffredou replied yes, but they weren't before. What it means is if there is a dangerous or defective condition and a person gets hurt they can't maintain an action against the Town unless the Town was given prior notice of the defect and did not fix that defect within a reasonable period of time. Section 65-a of the Town Law goes back to the old English law that "the King can do no wrong" and that municipalities are generally immune to these types of liabilities so it is not uncommon and it is, in fact, very common for municipalities to have these laws on the books. He said if the Town did nothing the Town's current law is fine and section 65-a of the Town Law is fine and it gives the Town protection. What this does is expand the areas upon which prior notice of defects are required to be given to the Town Clerk or the Highway Superintendent who in turn has to notify the Town Clerk.

Councilman Prendergast said the beach area is owned by the Village of South Glens Falls and we lease it and operate it and how does this law apply to the beach.

Councilman Cumm noted that the Town does the maintenance and upkeep to the beach area.

Attorney Auffredou replied that the Village Law is the same as the Town Law in that it has a provision in it that gives the Village prior notice of defect and immunity as well. He added that the Town has insurance. If there is a dangerous and defective condition at the beach then notice of that condition would have to be given to the Village in order for the Village to be sued and it wouldn't necessarily have to be given to the Town as the "Lessee" of the property. He also added that chances are that those types of conditions are not going to be problematic when the beach is open and operating. These laws are more for sidewalks; ice and snow build up on roads, culverts, bike paths, foot paths and things of that nature where there are dangerous and unsafe conditions. When the beach is operating there is Town staff present and if there are dangerous or defective conditions then they should be letting the Town Board and Recreation Director know this.

Councilman Prendergast asked what happens if someone notifies the Village and the Village doesn't notify the Town in a timely matter.

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Attorney Auffredou said it wouldn't be the Town's responsibility it would be on the "Lessor" the Village, and if they didn't notify the Town then the defense would be that the Town wasn't made aware of it. How can you fix something that you aren't made aware of?

Joe Patricke advised that the Village also has a Notice of Prior Defects Law on their books.

Attorney Auffredou said the Town does too, but this is bigger and better.

Councilman Kusnierz asked Attorney Auffredou if all the board would be doing by enacting this local law would be recodifying what is already contained either within the State Law or Town Law.

Attorney Auffredou said this was correct.

Supervisor Jenkins asked if anyone else wished to be heard.

There was no response.

A motion was made by Councilman Cumm and seconded by Councilman Prendergast to close the public hearing at 6:58 p.m.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Yes
Councilwoman LeClair	Absent
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Respectfully submitted,

Jeanne Fleury  
Town Clerk

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