

A workshop of the Town Board of the Town of Moreau was held on June 4, 2013 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, to discuss background check policies and procedures.

Supervisor Jenkins called the meeting to order at 7:00 p.m.

The Town Clerk called the roll, which resulted as follows:

**Town Board Members Present**

Robert J. Vittengl, Jr.	Councilman
Gina LeClair	Councilwoman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

**Town Board Members Absent**

Bob Prendergast	Councilman
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**Also Present:** Jeanne Fleury, Town Clerk; Karla Buettner, Attorney for the Town; Jamie Munks, Post Star Reporter

Supervisor Jenkins stated that he sent a letter to the District Attorney (DA) and had a telephone conversation with him about Robert Roberts. The DA said he was going to contact the New York State Police (NYS Police) and possibly Washington County. The NYS Police called him today and they will start an investigation in a day or two. They may be contacting the Town Clerk's Office, the **Principal** Account Clerk and members of the Town's Personnel Committee to discuss this matter and to determine how to proceed in this matter. It was their preliminary feeling that Robert Roberts perjured himself and it is up to the NYS Police and DA now as to what will happen to Robert Roberts. The NYS Police and DA were very supportive with the Town proceeding towards prosecution. It will send a statement that we aren't going to put up with this kind of thing here in Moreau. **[Amended 6/11/13 jf]**

Attorney Buettner said she drafted a background check policy and procedure that will work for the Town and in order to do this, she has spoken with the Department of Criminal Justice Services (DCJS), the Superintendent of BOCES and Judy Dehoda from Saratoga County Personnel Department to see what their concerns may be. She has also researched the law and drafted the policy based on what the State Comptroller wants Towns to do now and also looking at policies from a few Towns and Villages and based on what the Town Board's concerns were that were stated at a prior meeting. Based on her conversations with everyone she limited the policy to anyone over the age of 18 for any positions that are working with youths, seniors, disabled individuals and other vulnerable groups of individuals. Saratoga County Civil Service seemed to want to do that. They thought the Town had issues with the union and she explained to them that we couldn't apply this to current union employees, but we can for new hires. She said the policy states that there will be full background checks both state and federal for criminal history and sex offender registry. It outlines what the steps taken will be and the application process. It also addresses storage and retention of information obtained since it is confidential. She also included a few other forms. Saratoga County Civil Service stated that their form could not be changed, but we can add in our own screening process and it would be given to anybody applying for any positions for the individuals listed earlier. We have a lot of contracts with a lot of clubs like youth softball and baseball and we could include in the policy a requirement that anyone who is contracting with the Town has to conduct background checks, at least the sex offender registry, on the individuals associated with their club, such as coaches and volunteers, who will be working with youths and they would have to sign a document stating that this has been done. She also included an indemnity insurance agreement which is the same as the indemnity agreement that the Town utilizes now for people using the park, but it states that the organization verifies that there are no sex offenders.

Supervisor Jenkins asked if this would be included with the contract and Attorney Buettner said yes.

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Attorney Buettner said that in her memo to the Town Board she addressed finger printing. If the Town wants to do finger printing background checks and you go through the DCJS to do this then they have a whole procedure that has to be followed before the Town can do that. The Town would have to enact a local law before the Town can finger print people. Then the Town would have to go to DCJS and negotiate a use and dissemination agreement and once that is satisfied then they start the procedure to do the background checks. The sex offender registry is free. DCJS will check the sex offender registry for the Town. The Town can fax up to 30 names and over 30 names have to be e-mailed. The criminal background check fee is \$75.00 per name, plus a \$10.00 third party vendor fee and \$18.00 to \$19.00 for a federal background check for a total of a little over \$100.00 per applicant. She said that one of the things the board needs to think about if they are considering a full background check is that the Town cannot put a blanket, other than sex offenders, "if you are convicted of a crime you cannot work here". The corrections law won't let you do that. It is employment discrimination. They don't want you to discriminate against people who have a record, because the purpose is to get them back into the community and working again. This doesn't mean that the Town is required to hire them. The law sets forth an eight point test to go through. You look at how long ago the crime was committed, how does it relate to what they are applying for and things like that. Then you do a balancing test and as long you have a reasonable determination/deliberation you should be fine. The Town can't do a blanket "no felon is ever going to work here".

Councilman Kusnierz stated that they were looking at adopting a policy not a local law right? The answer was yes.

Councilman Kusnierz referred to the 2<sup>nd</sup> line in the draft policy that reads in part "and non-competitive class that work with our children". He would like it to read "and non-competitive class who may work with our children". He said that from time to time we have staffing issues and we slide people from Transfer Station to the Rec. Park.

Councilwoman LeClair asked if they wanted to hear what happened in Clifton Park before they go on with this. She said that they are not doing full criminal background checks. She met at the Clifton Park Town Hall with Attorney Buettner and Terry McGuire yesterday. They brought up some good points. They talked about, what are you doing with full background checks? They decided against it. They do application screening and the sex offender registry. She said the person in charge of this in Clifton Park has wonderful record keepings system. She keeps everything in a binder. When the recommendations for hire go to the Town Board she includes the name of the person, a copy of the fax that went with the request to have the sex offender registry checked and the results of that check. Each department is in the binder. It is very closely followed so that she knows it was done before anybody is working around the children. They do not do any checks except the sex offender registry because they said you can't do anything with the information once you get it. We cannot refuse to hire someone because they had a speeding ticket 25 years ago. As Attorney Buettner stated we have to be very careful about what they did and how we use that information during the hiring process. Clifton Park deals with over 200 employees.

Attorney Buettner stated that Clifton Park does utilize a criminal background check form that all applicants must fill out, but they don't do anything with it, they just put it in the file.

Councilwoman LeClair stated that Clifton Park uses the criminal background check form, because it asks more questions than the county form. The county form only asks if the person has been convicted of a felony or misdemeanor. Yes they can lie on the criminal background check form but it gives the Town a leg to stand on if an employee is driving around Town without a license or they were convicted several times of a DWI and they lied on the application it would make it easier if there was a decision to terminate that employee.

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Supervisor Jenkins stated that a background check should be done on anybody that will be driving a Town vehicle. If they had a DWI and had to go to jail for six months or two years then he didn't think the board would want them driving our vehicles. He said the highway employees are a separate issue, because they are union. He said our Rec. Department employees drive vehicles and plow with Town vehicles and we have our Water Department vehicle. He said he is comfortable where they are right now and he knows they all have driver's licenses. He then asked Attorney Buettner why they couldn't do the highway department and Attorney Buettner replied that it is an item that would have to be negotiated. You can do it for new hires, but not current union highway employees.

Supervisor Jenkins stated we have employees driving Town vehicles and he hopes we have a record of all of their licenses. We should have a copy of the driver's license if they are driving Town vehicles.

Attorney Buettner said they could get a copy of the union highway employee's driver's licenses. She thought that Supervisor Jenkins was talking about negotiating a background check on the current union highway employees.

Supervisor Jenkins said that getting a copy of their driver's licenses would be a place to start and with new employees in the highway department we can do background checks on them.

Councilman Vittengl stated that the Town's insurance carrier will run a check through DMV on anybody operating Town vehicles.

Councilman Kusnierz said he agrees with Supervisor Jenkins. It comes back to the fundamental question of what we are trying to achieve here and that is to protect our youth.

Supervisor Jenkins stated the state's biggest issue in the law is protecting young people and seniors. If we are going to do this then we need to do it right. We need to start documenting every employee's file with some of this information.

Councilman Kusnierz said there is a difference between an employee who is doing administrative duties and sitting behind a desk in one building and an employee who is operating Town equipment and moving around the Town and around children in our Recreation Park.

Attorney Buettner asked if the highway employees are ever driving around in the Rec. Park and the answer was yes. Attorney Buettner said "then you are fine, they're around the youth". She suggested that they either do this for just the individuals around the vulnerable population or town-wide. She said not to pick and choose and say for example, Highway and Rec., but not Transfer Station. She said if they were going to do this for one, then they need to do it for all.

Councilman Kusnierz said he agreed, but he was making the case that it is a different job for somebody who is not involved with operating equipment and in an administrative position vs. somebody who is out and about and moving around and amongst children and operating Town equipment. He realizes that they have to be uniform.

Attorney Buettner said they were talking about two different things. They were talking about getting the driver's licenses. The civil service form does ask if they have a valid driver's license and it asks for class, the number and the date of expiration. She stated that we are also talking about the criminal background checks. She used as an example a DUI, what are they going to do about that. If a person is going to be handling the Town's finances then a DUI may have absolutely nothing to do about that, but an embezzlement charge or conviction may. She said let's make sure that everyone has a valid driver's license upon employment who is going to drive Town vehicles.

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Supervisor Jenkins stated that 98% of the time people caught embezzling aren't charged by the employer's. They even give them a reference for the next job. He knows of someone who was caught four times.

Supervisor Jenkins said the one change that Councilman Kusnierz suggested is important and he didn't see anything else wrong in the draft policy. Anybody working in the Rec. Park should have a background check done on them without finger prints.

Attorney Buettner asked about the summer rehires and mentioned lifeguards. Does the board want to do another background check besides the sex offender registry on rehires?

Supervisor Jenkins stated that he would just do the sex offender registry. He said that most of the rehires are students and there are two or three people working in the park who live locally so they don't concern him. He said that what he is concerned about are the sex offenders. He said Mr. Roberts was 52 before he committed his first offense that we know of. He may have done this before, but we don't know. On his resume he put that he worked for one employer for 32 years and had the experience needed for the job. The State Trooper told Supervisor Jenkins that when he looked at the resume he saw where he worked at one place of employment for 32 years and he is in his 50's, but where has he worked for the last four or five years. Supervisor Jenkins replied to this saying that we have a lot of people who work for us part-time who are in that age group because they took an early retirement, especially prison guards, and they are trying to subsidize their pay so it isn't unusual that they would need employment. In Mr. Robert's case he worked for a contractor. He could have been out of work for that long too.

Councilwoman LeClair said especially with the unemployment the way it has been.

Supervisor Jenkins said that now he knows he spent four years in jail.

Attorney Buettner said that right now the policy is limited to individuals 18 years of age and above. She asked if they wanted to lower it to age 17.

Supervisor Jenkins said that a sex offense probably won't show up if they are under the age of 18, because it will be a sealed case even if they are a level 1 sex offender.

Councilman Kusnierz said he thought it should be age 17.

Councilwoman LeClair said she knows they are talking about sex offenders in the park, but she would like every person hired to be checked for that. She said they can legally do that right? Not hire them to work in the clerk's office or the supervisor's office?

Supervisor Jenkins stated they could check the sex offender site on-line for level 2 and 3.

Attorney Buettner said level 1 is not on the site.

Councilman Kusnierz asked which is the worst and Attorney Buettner replied level 3.

Supervisor Jenkins said he thought that level 1 are usually young people.

Supervisor Jenkins stated that Trooper Brooks told him that people read a lot about this in the paper, but that is only a small percentage of what is going on. That is why it is really important this day and age to stay on top of it. He said the board needs to do whatever they can to protect the young and we should be very concerned about who is working for us.

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Attorney Buettner said they can make the policy employee-wide and not limit it to those working with children and youth. She said they could do a full sex offender check on everybody and full sex offender and background check on the youth.

Supervisor Jenkins said he wanted a sex offender check done on every employee. He doesn't care what they do. In the youth programs we need to be very concerned, because it isn't just sex offenders, but it is people who have bad tempers who commit some minor assaults and get a minor misdemeanor out of it, because it is lowered to that in court. He said we should be concerned about anything happening to anybody in the park.

Attorney Buettner said they could do sex offender checks on every applicant then and renew it every year.

Supervisor Jenkins said it is pretty simple to check. He said you can go on-line and type in Roberts and there are about three pages of people named Roberts and he is in there as level 2.

Councilman Kusnierz said that will change the procedure drastically then.

Attorney Buettner said she would have to make it blanket for sex offenders and the ones for the vulnerable population would be sex offense and criminal background.

Councilwoman LeClair said that when they met in Clifton Park they talked about municipalities that have banded together for shared services and it was costing \$20.00 or \$30.00 so we could check into that.

Attorney Buettner said it was because there were more employees with four or five Towns who got together with a shared services agreement for background checks. Clifton Park seemed interested in this.

Councilwoman LeClair said that they are hiring 200 people for Rec. so they would be a good one to work with, because it would bring our numbers way down.

Attorney Buettner said only if they are doing criminal background checks and Councilwoman LeClair said if they were willing to do that they would be a good Town to work with.

Supervisor Jenkins suggested our Recreation Committee or a couple volunteers go through the Clifton Park forms and come to a decision on which ones we should use or any changes that should be made.

Councilwoman LeClair said she likes their forms and she likes the criminal background check form and would be comfortable with that one. At the bottom of the form they sign authorizing criminal or civil record checks. So you are not just having them fill it out and put it away, it gives you permission to do random checks upon hiring.

Supervisor Jenkins suggested that one board member from the Recreation Committee and one board member from the Personnel Committee go over the forms.

Councilwoman LeClair didn't think this was necessary. She thought each board member could review the forms. They are pretty straight forward. She likes the confidential reference. When she volunteered to 4-H she had to fill one out. People that know you can vouch for you.

Supervisor Jenkins stated that youth baseball already does background checks and Attorney Buettner said they could sign a form saying they have already done background checks.

Attorney Buettner asked if they would walk with her through the draft policy so she could finalize it and the board could adopt the policy at the next meeting if it was their desire.

She asked who was going to do the background checks.

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Supervisor Jenkins stated that the Personnel Committee is going to go through applications and when they find a number of people they want to interview for the job, then first we could check the sex offender registry before they are interviewed and his office staff can do that simply by going on line and checking the sex offender registry. If it is somebody we think that we should do a full background check on and it is a position that we feel requires it then the board will have two choices. He said that Councilman Kusnierz said that when they get to that point he wants it done. Any full-time position the full board should do the interviews. We could then decide if we want to run check #1, #2 or #3. If we run check #1 and it is fine then okay. If the result of check #1 is not good then we could run check #2 and so on.

Councilwoman LeClair said not necessarily this time of year. They were told it takes two weeks to get the results of a sex offender check.

Supervisor Jenkins said if they are a level 2 or 3 sex offender you can find them on-line.

Attorney Buettner said it is level 1 that takes time. If you want to be certain and make sure they aren't a level 1 sex offender then you have to go through DCJS.

Councilwoman LeClair said the service can take overnight or up to seven or ten days. If we are going to hire three people and we stagger them then we could be weeks before we get them on board.

Supervisor Jenkins said the check we did was sent out on Friday and they e-mailed us the results on Tuesday. This was a criminal background check and sex offender check.

Attorney Buettner said that they ran theirs through DCJS and that is why it took so long, because now everybody is getting their camps up and running.

Supervisor Jenkins said they paid \$65.00 for each one. Once they get them they can do the checks pretty fast.

Councilwoman LeClair said they should send them for physicals first. We have to pay \$25.00 for those and we sent out three for physicals and one failed the physical and wasn't able to be hired. We spent \$65.00 for a background check and it came out okay and then we paid \$25.00 to send him for a physical and he failed.

Councilman Kusnierz stated that any person that we are intent on offering a position to should do an initial sex offender screening and Councilwoman LeClair added before we even interview. Councilman Kusnierz replied no, he didn't think they had to do that. It should be prior to offer of employment. Councilwoman LeClair preferred to do it before the interview and why waste the time interviewing.

Supervisor Jenkins said if they came up with five or six people to interview then they could go on-line and check the sex offender registry for level 2 or 3 offenders. Level 1 involves mostly young people and he didn't think there were many.

Councilwoman LeClair asked Attorney Buettner to find out what level 1 is and what crimes they entail.

Attorney Buettner reminded the board that they can plea down to level 1.

Councilman Kusnierz asked why they would waste time, energy, resources and money doing a check on somebody that we may not hire.

Councilwoman LeClair stated it doesn't cost any money to check the sex offender registry.

Discussion followed on level 1 offenders.

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Councilman Kusnierz stated that the simplest way to cover all our bases and protect the town is to have these policies prior to. If we have ten applicants and interview five we don't need to do all the background checks until we decide, okay we narrowed it down to two people, then we start with the sex offender background all the way through.

Councilwoman LeClair said they should check the sex offender registry and then they hire.

Councilman Vittengl asked if three of the five didn't pass their physicals.

Councilwoman LeClair said they chose three to hire and one didn't pass the physical.

Attorney Buettner stated that she knows what they want. They want sex offender checks on every single employee and Supervisor Jenkins said right. They want sex offender and criminal background checks on every single employee working with the vulnerable population and Supervisor Jenkins said right. They want sub-contractors to sign off saying they completed a check of the sex offender registry for all of their coaches and volunteers.

Councilman Kusnierz asked if it relieves the Town of liability if they do that and Attorney Buettner said it goes a long way to do that.

Attorney Buettner asked if they were okay with the employment and volunteer screening form that she created. The answer was yes. No audible objections.

Attorney Buettner said the board was going to go through the forms from Clifton Park to see if they want to use them.

Attorney Buettner said the rehires are only going to be put through the sex offender check and we are not going to do the criminal background check on the rehires and Supervisor Jenkins replied yes.

Supervisor Jenkins said if they were done on this topic and everybody was satisfied then he had a few things to go over regarding the new municipal complex.

Supervisor Jenkins stated that Kost-It quoted on a network infrastructure and telephones installation and relocation and installation of equipment from current Town Hall to new municipal complex and everything will be operational and functional. They started with four vendors for quotes and we got down to two. One vendor had a better price on installation of cable that we already approved. He said there are two costs. The first is \$10,911.80 for network infrastructure, which will put all of our equipment in one location and monitored by one computer system and monitor and it will give us wireless internet. The second cost is for the telephones in the amount of \$7,577.00. The Town Court will retain the use of their existing system and there will be a \$2,500.00 relocation expense. The total cost will be \$20,988.80 and we will use all of our current equipment, but new technology will make it faster and the system will be more functional and it will include an eight port net director that will let everything work off of one system.

Councilman Kusnierz asked what was budgeted for this in the project costs and Supervisor Jenkins replied \$55,000.00 for telephones, computers and a PA system. This comes to about \$27,800.00. The PA system will cost about \$8,000.00 to \$12,000.00 or less.

A motion was made by Councilwoman LeClair and seconded by Councilman Vittengl to accept the proposal from Kost It at a cost not to exceed \$20,988.80 to be paid for out of the Municipal Center Capital Project Fund.

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Roll call vote resulted as follows:

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

Supervisor Jenkins stated that 16 tons of rubble needs to be spread for the driveways and parking lot at the new municipal complex. Four quotes were sought and only two quotes were received as follows

Galusha & Sons	\$20,752.00
Don Kingsley Excavating	\$6,400.00
Bob Clear	Did not quote
Mike Morrissey	Did not quote

A motion was made by Councilwoman LeClair and seconded by Councilman Vittengl to accept the quote from Don Kingsley Excavating at a cost not to exceed \$6,400.00 that will be paid out of the Municipal Center Capital Project Fund.

Roll call vote resulted as follows:

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

Supervisor Jenkins stated that he had a Change in Proposal to eliminate 10 linear feet of wall cabinets, base cabinets and countertops in the copy room and add 15 linear feet of open cabinets with dividers and base cabinets with drawers and cabinets in the Town Clerk's Office. We will get a credit \$2,200.00 for the removal of the cabinets and countertops in the copy room and we have to add \$4,475.00 for the cabinets in the Town Clerk's Office and the net result is an increase of \$2,388.75, which includes \$113.75 of overhead and profit.

The next Change in Proposal is for a sliding window & countertop for the Principle Account Clerk's Office at a cost of \$925.00 plus \$46.25 for overhead and profit for a total of \$971.25.

Brief discussion followed on this Change in Proposal.

The final Change in Proposal is for the installation of J Blocks at the pipe penetrations through the north wall, shake siding. Right now there is just a pipe coming through the wall and this is more of a cosmetic thing. The cost is \$254.15.

A motion was made by Councilwoman LeClair and seconded by Councilman Vittengl authorizing the three Change in Proposals listed above.

Roll call vote resulted as follows:

Councilman Vittengl	Yes
Councilwoman LeClair	Yes
Councilman Kusnierz	Yes
Councilman Prendergast	Absent

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Supervisor Jenkins                      Yes

A motion was made by Councilwoman LeClair and seconded by Councilman Vittengl to adjourn the workshop at 8:07 p.m.

Roll call vote resulted as follows:

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

Meeting adjourned.

Respectfully submitted,

Jeanne Fleury  
Town Clerk