

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, etal with possible Town Board action.

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

The Town Clerk called the roll, which resulted in the following Town Board Members being present or absent:

Town Board Members Present

| | |
|-----------------|--------------|
| Tom Cumm | Councilman |
| Bob Prendergast | Councilman |
| Gina LeClair | Councilwoman |
| Todd Kusnierz | Councilman |
| Preston Jenkins | Supervisor |

Town Board Members Absent

None

Also Present: Jeanne Fleury, Town Clerk; Town Residents: **Peggy Jenkins, Assessor (amended 10/28/09 by jf)** Adele Kurtz, John Telisky, Shelley Englert

Supervisor Jenkins welcomed everyone to the meeting and asked for a motion to go into executive session to discuss the Article 7 with Erie Blvd. Hydropower “doing business now”. He told those present that the Town Board would possibly be taking action following the executive session.

A motion was made by Councilman Cumm and seconded by Councilman Prendergast to adjourn to executive session at 7:01 p.m. to discuss the Article 7 involving Erie Blvd. Hydropower.

Roll call vote resulted as follows:

| | |
|------------------------|-----|
| Councilman Cumm | Yes |
| Councilman Prendergast | Yes |
| Councilwoman LeClair | Yes |
| Councilman Kusnierz | Yes |
| Supervisor Jenkins | Yes |

The Town Clerk did not sit in on the executive session.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to adjourn the executive session and re-open the special meeting at 7:30 p.m.

Roll call vote resulted as follows:

| | |
|------------------------|-----|
| Councilman Cumm | Yes |
| Councilman Prendergast | Yes |
| Councilwoman LeClair | Yes |
| Councilman Kusnierz | Yes |
| Supervisor Jenkins | Yes |

Supervisor Jenkins asked for a motion to authorize Lou Lewis of Lewis & Greer, P.C. to sign the stipulation of settlement with Erie Blvd. Hydropower and Town of Moreau.

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, etal with possible Town Board action.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair authorizing Lou Lewis of Lewis & Greer, P.C. to sign the stipulation of settlement with Erie Blvd. Hydropower and Town of Moreau.

Councilman Kusnierz commended the Board for postponing this settlement. We have been back and forth at the settlement table for some time now on this very important matter, this is the most critical financial decision that he has ever had to make on the Board. By prolonging the settlement negotiations to this point in time it has greatly benefitted the non utility taxpayers in this community. It has done so by putting the Town in a stronger position to come to an agreement and get a settlement on the part of the utilities to increase what they were willing to stipulate to, which in the long run saved all the taxpayers money, because it means less money that has to come out of all the other real property taxpayers in our community. However, tonight's action is going to cost the Town dearly in his opinion whereby our community is going to be responsible for offsetting over \$2.5 million over a five year period and the School District is going to be responsible for making up over \$400,000.00 in revenues. He knows there is going to be some disagreement from other members of the Board. These challenges are never going to go away, because we have these specialty properties that are so highly valued. They are highly valued because of what they produce. Tonight's action is going to take care of a problem the Board has faced going back to 2003 with the hydro. It isn't going to put the issue to bed. Our community is going to be forced to defend these challenges going forward and it is going to cost our community continuously. We have reval right around the corner. There are going to be new values established for all real property holders in our community, but they won't be established as part of this settlement for the next five years with Erie Blvd. and to him this is unfair. We won't have the same stature we had prior to the action that is going to take place here tonight and that is because we have been successful twice in defending our real property values with the utility companies and we are recognized across the state as the lone community that stood up to the big guys with deep pockets and won. This reputation would give us greater standing when we have to face these challenges in the future but, because a majority of the Board will be in agreement to settle that is one thing that won't work in our favor going forward. He appreciated the positions of the other members of the Board, but he will be voting no on this agreement for all the reasons he stated over several years in various tax certiorari cases. ~~He~~ **I** respects anybody's decision that differs from his.

[Amended 10/13/09 jf]

Roll call vote resulted as follows:

| | |
|------------------------|-----|
| Councilman Cumm | Yes |
| Councilman Prendergast | Yes |
| Councilwoman LeClair | Yes |
| Councilman Kusnierz | No |
| Supervisor Jenkins | Yes |

Supervisor Jenkins stated he respected what Councilman Kusnierz said. It is important to have integrity any time you go into negotiations and the stronger the position the better. However, based on current values that are going on in the utility business and recommendations from our special legal counsel in which he advises that the current "assessment" of \$145 million would likely not be sustained in court. The reduction to \$120 million going forward is still very debatable to the Town since only 79% of the facility is actually in the Town and the assessments of Sherman Island and Feeder Dam are going to be maintained at current values. Attorney Lewis also advised that the Town has successfully defended Erie's claims twice, but in the process the court has laid down the blueprint for the proper evaluation of these facilities and we cannot expect Erie to make the same mistake three times. The courts have previously relied on reproductions costs less depreciation methodology and the highest yield we had in 2001 was \$99 million. However, now there is deregulation of electric price information available now and they are using income stream as the method of value these days. This is a real issue. We are looking at a situation where

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, etal with possible Town Board action.

electricity sold by utilities into the market is half of what it was a year ago, but that could change at any time. We have the value of \$120 million that they have accepted and are going to sign for. If you go back and look at years 2006, 2007 and 2008 and based on numbers given by Attorney Lewis and assuming

they accept the value of \$120 million and factor in that four year period then they overpaid \$2 million and they aren't going to ask for that money back. The money that the school is going to pay is going to come out of their tax certiorari fund where they have over \$3 million set aside for this type of problem. The only reason this happened is because this was a 2009 appraisal that they pay for right now and the Town won't be billing it until next January. He thought it was a wonderful deal, but he would still like to get \$145 million. Attorney Lewis estimated that if we went to court we would be looking at another \$500,000.00 in legal fees and the best we could come out with is where we are at now. He is the man who led us before with the previous Board. He met with Harry Gutheil today and went over some of this information to get some feedback and he didn't say anything "uncomfortable". He basically tried to negotiate these things back in December of 2007 and was talking with National Grid and Brookfield. He will contact Lou Lewis in the morning and ask him to release the settlement agreement. It will be signed by Erie Blvd. Hydropower. Anybody who is interested in a copy it will be available in the Town Clerk's Office.

Adele Kurtz thanked Supervisor Jenkins and Councilman Kusnierz for their comments and said she would like to hear from the other members of the Board.

Councilman Cumm said that the two or three teleconferences he sat in on Attorney Lewis stated the particular points stated here tonight. Attorney Lewis led the Town over the years on the other issues and here he is saying the Town should settle and this is the best deal we are going to get.

Adele Kurtz asked if Attorney Lewis actually said that.

Councilman Prendergast replied that Attorney Lewis said it was a better deal than what we were going to get in court. The number we ended up with is more than what he had expected.

Councilman Cumm stated that Attorney Lewis said he expected \$115 million.

Adele Kurtz asked if this resolved the 2003-2009 and Supervisor Jenkins replied it closes all those cases. They are waiving "\$17 million in refunds and interest". The only negative thing is that if we violate the agreement and raise the assessment they could collect up to \$554,000.00. When we first started this they requested that we leave all years open until we actually served the five years and then we close one year at a time as we settle each year. We continued negotiating until we got to this agreement.

Adele Kurtz asked if part of the stipulation then is that we don't raise the assessment for how many years?

Supervisor Jenkins replied, five years starting in 2009.

Councilwoman LeClair said it was important to note that Erie Blvd. thought they were worth \$47 million and that was the number they were working with.

Supervisor Jenkins said the Town of Lake Luzerne settled on their part of the site and they got 30% less than what we are getting. They went with the ORPS numbers and a little bit more.

Adele Kurtz asked if we are not allowed to raise their assessment for the next five years then where is the School District and Town going to make up the difference.

Supervisor Jenkins said that by the time we file next year we will have picked up \$10 million in assessments based on the current construction going on. Also, Bakers Falls Hydro is on a PILOT that is

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, et al with possible Town Board action.

over next year. We aren't going to get "killed" by this. There is an adjustment and the biggest is the school taxes.

Adele Kurtz stated that her concern is over the fact that during the reveal there are going to be adjustments to people's assessments and if we don't have the revenue from the hydropower over the next five years then it has to be made up somewhere. Are we going to cut the budget over the next five years?

Supervisor Jenkins asked if she was talking about the school budget.

Adele Kurtz said we are one community.

Supervisor Jenkins said our general fund budget is going to be less than next year. The tentative highway budget is higher, but the Board hasn't worked on that budget yet. As far as school taxes he doesn't suspect that their budget will go down or their spending will go down.

Adele Kurtz asked if don't we have to cut the budget to maintain where we are right now?

Supervisor Jenkins thought the school should cut their budget. They keep talking about expansion, but the studies from the capital district tell us the population is flat for the next few years. There is anticipated minimal growth.

Adele Kurtz said even with the new developments being approved by the Planning Board.

Supervisor Jenkins said yes even with those.

John Telisky asked if we are taking a step back with this settlement. We have never taken this position before. We have stepped out in this one. The numbers everybody is using are projections and when they low ball you with \$45 million that is a negotiation tactic. The \$500,000 in legal fees is a projection.

Supervisor Jenkins stated that the last two cases cost us \$2.7 million.

John Telisky asked if when they come back at us again we are going to be in a bad position to negotiate.

Supervisor Jenkins replied no. Good negotiations work if both parties work together. When the negotiations with Brookfield started he and the assessor met with the president of the company, their staff attorney and Tom Uncher, Vice-President. From that point on they met solely with Tom Uncher trying to come up with something fair to the community and fair to them. The company respected Tom Uncher's decision. The \$120 million value is where it would come out based on the information he had. Attorney Lewis used his information as to what is at the site, ORPS numbers and his own methodology and came up with \$110 million. He then had another person go through the valuation and they came up with \$115 million. The Town Board said the lowest they were going to go was \$120 million. The utility company came back with \$100 million and we said no. They came back and agreed to the \$120 million. This Board has talked about this for over a year. He respected everybody's opinion on the Board. Based on his personal opinion he made the right decision. Based on what he was told we got a better value than what it may be appraised at.

Councilman Prendergast stated that prior Boards attempted to negotiate with the assortment of power companies that have come through here and they were at \$47 million and they weren't willing to negotiate and the Board wasn't going to budget at \$140 million. It was as simple as "as long as you aren't going to, we aren't going to". "If you aren't going to talk about it, we aren't going to talk about it." The attempt was made. The message was sent that we would talk and they were at \$47 million so we didn't talk. These numbers do represent our case.

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, etal with possible Town Board action.

In reply to a statement made by John Telisky Supervisor Jenkins stated that our attorney said we wouldn't do any better in court. In 2006, 2007, 2008 they were overbilled and we don't have to give refunds.

Councilman Cumm recalled Attorney Lewis stating that we didn't win the other case they lost it by not proving their assessment.

Councilman Kusnierz said that they could spin it anyway they wanted, but we won.

John Telisky said he wanted to make sure that when he left here tonight he had all the information and that he felt comfortable with it. He asked if we weaken our position and then stated that they are going to come right back at us, because we stepped out.

Supervisor Jenkins stated that any Board that sits through a long process like this is going to make the best decision possible for the community. They are going to be receiving an appraisal from the assessor and an assessment. It will either be updated each year or increased by the equalization rate so it will go up, but they will only be assessed at \$120 million, but when it reaches that point they will pay more tax. At that point they may go to an Article 7 again. It doesn't mean the Board sitting here won't fight it. He didn't necessarily want to go in that direction. Any member on this Board would not back down from anybody. Everyday Harry Gutheil came here and did what he felt was best for the community. He would love to own these facilities.

Shelley Englert asked what year was the \$145 million assessment.

Supervisor Jenkins said it will be 2009. In 2008 it was ~~\$243 million plus~~ **\$143 million plus.**
[Amended per Supervisor Jenkins 10/13/09 jf]

Peggy Jenkins said not to confuse assessment with market value. The assessment stays the same and the market value changes.

Adele Kurtz stated that in the contract GAR was only responsible for reviewing the land not the structures.

Supervisor Jenkins said there is another letter supporting the basic contract stating that they will review all the data and based on their findings they will determine if the value is proper and if so there is no charge. If they find it isn't then they will charge a maximum of \$15,000.00 to correct that value.

Adele Kurtz stated that based on the stipulation wouldn't the Board say there is a problem with their valuation? If so won't we have to spend more money to have GAR actually do a full valuation? If we are stipulating that the value is \$120 million not \$145 million then isn't that an admission that there is a problem?

Supervisor Jenkins said the \$145 million value was generated by the equalization rate not by any current appraisal. The whole problem with why we can't substantiate the \$145 million is because the equalization rate is so low and the high property values are going to get beat up and the low property values get a better deal.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to adjourn the special meeting at 8:04 p.m.

A special meeting of the Town Board of the Town of Moreau was held on September 23, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the Article 7 Tax Certiorari involving the Town and Brookfield Power, etal with possible Town Board action.

Roll call vote resulted as follows:

| | |
|------------------------|-----|
| Councilman Cumm | Yes |
| Councilman Prendergast | Yes |
| Councilwoman LeClair | Yes |
| Councilman Kusnierz | Yes |
| Supervisor Jenkins | Yes |

Respectfully submitted,

Jeanne Fleury
Town Clerk