

RUSH TOWN BOARD  
 Minutes of February 26, 2014

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:00 PM on February 12, 2014, at the Rush Town Hall, 5977 East Henrietta Road, Rush, New York. Meeting was held in the Rush Town Justice Court to accommodate a public hearing. Everyone present participated in the Pledge of Allegiance.

PRESENT: Richard Anderson ----- Supervisor  
 Kathryn Steiner ----- Councilperson  
 Daniel Woolaver ----- Councilperson  
 Cathleen Frank ----- Councilperson, Deputy Town Supervisor  
 Pamela Bucci ----- Town Clerk  
 John Mancuso, Esq. ----- Attorney for the Town

EXCUSED: Rita McCarthy ----- Councilperson

OTHER TOWN OFFICIALS PRESENT:

Mark David ----- Highway Superintendent, Resident  
 Gerald Kusse ----- Code Enforcement Officer, Resident

RESIDENTS PRESENT:

Jack Mould	Julia Lederman	Lee Hetrick	Carol Ann Stahl
Carol Barnett	Don Houk	Matt VanCurran	Carol Barnett
Deb Kusse	Ansgar Schmid	Selden Chase	Claryce Alwardt
Christopher Kachala	Jeff Nicholas	Eathan Kachala	Robert Bock
George Stahl	Carol Powers	Bob Powers	Ed Richard
Jim Chaize	Charlie Hunt	Robert Kuhls	Dave Rapple
Lisa Clemens	Marianne Rizzo	Jim Wilkins	Mark Murray
Jennifer Murray	Curran Brown	Chris Brown	Matt Schwasman
Sandra Boysen	Joan Starkweather	Harvey Seymour	Dick Goetz
Nancy Gortz	Kathryn Hankins	Karl Olsen	Cecil Palmer
Mike Jenke	Gail Sandler	Rich Reichhart	Hans Schmitthenner
Paul Bishoping	Robert Kraus	Jean Stephens	Bill Stephens
Roy Czernikowski	Keith Nehrke	Kyle Stevens	James Kolb
Patricia Kraus	Jordan Kleiman	Jim Bucci	Doug Platt
Conchetta Plat	Jeanne Shwasman	Dave Sluberski	

OTHERS PRESENT:

John Scirabba ----- Landtech  
David Sully ----- Attendee

I. OPEN FORUM

Supervisor Anderson welcomed all to the meeting and opened the floor to anyone wishing to address the Town Board. All comments regarding the public hearing should be held until that time.

Resident Selden Chase reiterated his concerns previously presented at the January 26 Town Board meeting: (1) request for an audio system for all public to hear all persons speaking at board meetings; Supervisor Anderson has advised Mr. Chase that microphones are a strong possibility; (2) request that the Town change their wording on the side of the Code Enforcement Officer's personal vehicle to read Building Inspector so that it's more friendly than confrontational; Code Enforcement Officer Kusse has canvassed other town's vehicle signage and 80% of them use Code Enforcement wording; (3) suggest a Citizens Committee to review the Zoning Code for possible changes.

Supervisor Anderson stated that the Town Board conducted interviews for the open zoning board positions. Once a full board has been appointed, sections of the Town Zoning Code will be reviewed and suggestions for proposed updating will be presented to the Town Board.

**RESOLUTION #66-2014**

II. APPROVAL OF MINUTES

Councilperson Steiner moved to approve the Minutes of February 12, 2014, as presented by Town Clerk Bucci. Councilperson Woolaver seconded the motion.  
Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried.

III. APPROVAL OF ABSTRACT

**RESOLUTION #67-2014**

Councilperson Steiner moved Be It Resolved that having audited all the claims against the funds listed on Abstract #4 for vouchers #2014 185 through #2014 237, excluding #230, is allowed for payment in the amount of \$24,974.75. Councilperson Frank seconded the motion.

Roll:

Councilperson Woolaver	aye
Councilperson Steiner	aye

Councilperson Frank                      aye  
Supervisor Anderson                      aye                      carried.

IV. CORRESPONDENCE

Monroe County Sheriff's Department – Weekly Zone B Report– Supervisor Anderson stated that other than a DWI-snowmobiler, incidents in Rush were nonexistent. A warning remains for vehicle break-ins.

Monroe County Office Of Aging – Supervisor Anderson and Recreation Supervisor Patricia Stephens met with the Monroe County Office of Aging concerning viability of a meal services program with funding available in the future. Adults 60 and older, including their spouse, would benefit from such a program for \$3.00 per meal. Town facilities were visited and adequate measures discussed.

V. REPORTS OF OFFICERS AND COMMITTEES

Councilperson Steiner had no report.

Councilperson Woolaver stated that both he and Councilperson McCarthy performed an audit of the Rush Justice Court financial books. Councilperson McCarthy will submit a report.

Councilperson Frank, as liaison, attended both the Fire Commissioners meeting and the Planning Board meetings. Change of use and proposed rezoning was discussed at the Planning Board meeting.

Attorney John Mancuso had no report.

Town Clerk Pamela Bucci had not report.

Code Enforcement Officer Gerald Kusse had no report.

Highway Superintendent Mark David had no report.

Town Engineer Todd Ewell had no report.

PUBLIC HEARING – 7:15 PM: Proposed Rezoning of 7262 West Henrietta Road

Supervisor Anderson moved to interrupt the meeting to conduct the Public Hearing as advertised and scheduled at 7:15 PM. Councilperson Steiner seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried.

Town Clerk Bucci stated that the Notice of Public Hearing was duly published in the Henrietta Post and the Sentinel as well as the Genesee Valley PennySaver during the legal timeframe with the same being posted on the town clerk's bulletin board and the town website. For the record, Town Clerk Bucci read the Legal Notice in its entirety.

Attorney Mancuso stated the purpose of the public hearing was to hear public comment for the proposed rezoning. Owner, Rick Dorschel of Rush Associates LLC, initiated the request. They approach the Town Board with rezoning of property. The Board must follow specific procedures in giving notice to agencies under State Environmental Quality Review Act (SEQRA). The town acts as the lead agency. A public hearing is required for substantive information. The focus of the meeting is to elicit comments.

Resident John Morelli asked, as a legislative act, whether or not the Town Board could have chosen not to hold a public hearing. He also stated that the concept of rezoning is to change town laws and a petition to change the law is submitted to the Town Board.

Attorney Mancuso stated that anyone has the right to file a petition to change a law. The Town Board has an obligation to respond to a petition in whatever form they choose and for this matter, the applicant initiated a request to change zoning. The Town Board has the discretion on whether or not to make changes.

John Scirabba, of Landtech, agent representing Rush Associates LLC introduced himself and Curt Olsen who was also in attendance to address possible concerns. Mr. Scirabba would entertain answering as many questions as possible at the end of the hearing. A site plan was displayed.

John Scirabba made the following presentation. The property is 26.9 acres which includes 1.7 acres of commercial property and 25.2 residential property. His client Rush Associates LLC would like to develop the property for commercial purposes which require the 25.2 acre portion to be zoned commercial. The property has public water, gas and electric. The geography of the map including wetlands and slope was presented.

A new 2 way curb cut on Route 251 is provided on the map. The map shows commercial development of proposed Phase I which includes restaurant or coffee house with drive thru, bank with drive thru and general office space. Phase II provides for specialty retail/commercial uses, a warehouse facility and general office bldg.

Comprehensive Plan, Page E-8 states that "the character of Route 15 corridor is clearly in transition and will be established by the new development that occurs. Various limited industrial and commercial uses will eventually predominate. The I-390 Interchange makes this not only appropriate, but also, to a considerable extent, inevitable. The Plan proposes ways to guide this development in the Route 15 corridor to the town's greatest advantage." An excerpt from Page 6-5 of the Comprehensive Plan reads that "I-390 Highway Commercial Interchange Areas" - This area has potential for capturing business from both the interstate traveling motorists and those making the daily working commutes to and from the greater Rochester-Monroe County urban area to the north, the Town residents." Rush Associates will work with the DOT for a safe process.

Rush Associates has started the proposal by presenting the concept and site plan informally to the Town Board, Planning Board, Zoning Board and the application was reviewed by the Conservation Board.

Positive written feedback to move forward with the application was received from the Planning (09/13/13 favoring), Zoning (0924/13 acceptable use) and Conservation Boards (09/13 attention to recognize drainage and wetland). All were read aloud. A traffic study has been done and the DOT in October 2013 stated that highway permits were required in preparation for access points. Challenges were understood.

Supervisor Anderson requested comment from CHA, Town Engineer Todd Ewell. Engineer Ewell has not received responses to his comments regarding a traffic study of August 6, 2013. Mr. Sciarabba stated that the questions are site specific and until the Rush Associates knows that it is zoned commercial, it will move forward with addressing those specific concerns.

Supervisor Anderson stated that letters have been received and will become part of the permanent record.

Resident Marianne Rizzo read aloud a definition of identity and letter in opposition aloud.

Resident John Morelli referenced vision of the town and specific pages of the Comprehensive Plan including 6-7 states "the site's topography and its proximity

to the entrance ramp for I-390 requires development techniques such as clustering of building and sound absorbing design features normally associated with higher density residential types of development. In addition because of the larger volumes of traffic that would be generated the higher density residential use and the site restriction for motorists traveling through the intersection of Routes 15 and 251, access for this area would have to be provided from lands adjacent to the east along Route 251.: "Multiple-family type apartments dwelling units and clusters of townhouse units are envision for this area when public sewer is available."

Resident Hans Schmitthenner recommended a review of a specific traffic patterns, cautioned change in site appearance of a commercial site, personally wouldn't mind part of the property for a Dunkin' Donuts and believes some commercial in the town is warranted.

Resident Dave Sluberski read a letter of opposition to the rezoning referencing the Master Plan and a change that has already occurred in additional traffic on his road, Rush West Rush Road, as a go between Route 15 and East River Road as well as other matters supporting his opposition.

Resident Carol Barnett read aloud a letter of opposition referencing the character of town, adverse effect of rezoning and suggested the possibility of a domino effect of commercialism, possibility of a hazardous traffic area, and the property owner has no right to change the law to rezone for his own benefit. Mrs. Barnett also asked that the flyer that from 6 Rush citizens that was placed in the PennySaver become part of the record.

Resident Scott Farrington stated that he did not believe Rick Dorschel was suffering an economic hardship.

Resident Carol Powers provided her opinion of the corner being unsafe, not meant to be zoned a commercial corridor, the possibility of sewage, and it buffers a historic home.

Resident Keith Nehrke commented in opposition because a stream flows through the named property where he collects bait and that the traffic on Route 251 is already heavy at times.

Resident Selden Chase stated that he farmed the property in question about 30 years ago and agrees with the traffic congestion at certain times of the day. The lighter green areas on the site map slope down and drain. A problem may exist with access at Route 251.

Resident Jim Kolb and owner of Colby's Restaurant is in favor of the rezoning. His restaurant is directly across from the proposed site and his family also lives closest to the proposed site, separated by Route 15. There have been zero accidents in the ingress/egress of Colby's/Diamond Limousine entrance of that commercial property. Growing up in a farming family he realizes the importance of farming and environmental issues associated with commercialism. Rush does not have sewers needed for large commercialism. Creating this commercial site will help keep good services in town, promote a few more jobs for adults as well as teenagers. Rush has excellent elected town government working for the town's best interest. Supporting your local business brings sales tax to your community that funds the Rush environment that we all love and helps steady taxes. There is a need to foster the economic vitality Rush. Traffic is going through the town leaving sales tax in the businesses that support the Town of Rush in more ways than one. Driving to other towns for services causes an environmental impact. A balance is needed to support and preserve Rush.

Resident Ted Barnett stated his opposition and that the choice in rezoning property is that of the residents.

Resident Jack Mould is waiting to hear for support of the project and the public hearing is not a demonstration of power.

Resident Jim Bucci stated that there is very little to develop in the hamlet of Rush. There should be a plan to develop where people get on or off I390, Routes 251 and 15. There are not too many places in the hamlet or town as a whole to open a business. Mr. Bucci stated that the plan on the table provides young teenagers and young adults with an opportunity to work in their community. It is a fact that the reason why the BigM didn't stay open is lack of town support. With a few exceptions, small town services that were conveniently located in the hamlet of town have been here and are now gone. 99% of the comments heard this evening are negative and solutions or ideas are non-existent. Mr. Bucci suggested that people do business in the corridor of Rush and then be on their way. Sales tax is generated this way and possible our services will not be depleted and Rush taxes will not increase.

A person from audience asked what was wrong with taxes and he'd be will to pay additional if this rezoning did not pass.

Supervisor Anderson stated that Mr. Bucci should be allowed to finish his commentary and the public hearing was strictly for that purpose.

Attorney Mancuso interrupted the meeting to remind all that the purpose of the meeting was for the Town Board to hear comments and not to engage in an audience question and answer session.

Resident Jordan Kleiman commented that focus of commercial development should be in the hamlet. A section of his letter in opposition was read aloud. The purchase of the property as zoned residential should not be considered a hardship to the owner.

Resident Patricia Kraus read a letter aloud in opposition of the rezoning. She believed that the question and answer session was exciting and needed in the community so that all can understand each other.

Non-resident Greg Lloyd lives in Henrietta, who was present with his son, a boy scout in attendance, and does not support a rezone in Rush.

Resident Matt Schwasman, residing nearest to the entrance of the proposed rezoning property spoke at the front of the room of the many discussions he had with agent John Scirabba representing Rush Associates LLC and stating that he was taking into account concerns related to his property. Mr. Schwasman appreciates the community awareness, provided history of relatives' family farms in Henrietta that no longer exist but have been replaced by buildings. Mr. Schwasman provided the history of his home dating back to the late 1700's. Peter Price was the first owner of the Schwasman property and that the barn foundation had been started in 1802.

Sight lines coming east and west from Route 251 are a great concern to Mr. Schwasman. A queuing lane is proposed. Mr. Schwasman trusts that Agent John Scirabba will make the best possible decisions considering all of the Swashman concerns.

Resident Dave Sluberski, as Leader of the Rush Democratic Committee, met with many residents while campaigning and read a detailed letter in opposition of the proposal including a reminder to the Town Board that opinions of the Zoning, Planning and Conservation Board are not a basis for Town Board decisions on rezoning matters.

A Boy Scout in attendance who is a Henrietta resident visits Rush for its country beauty and is in opposition of the proposal.

Bob Powers requested additional time to submit written comments.

Supervisor Anderson stated that additional written comments will be accepted in the Town Clerk's Office through Wednesday, March 5<sup>th</sup>.

Although Supervisor Anderson stated that he would read letters already received into the record, he was advised by Attorney Mancuso that it was unnecessary and that they would be included in the permanent public hearing record.

**RESOLUTION #68-2014**

Having no further comment from the audience, Supervisor Anderson motioned to close the public hearing at 8:50 PM. Councilperson Steiner seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried.

VI. OLD BUSINESS

A. Pure Waters Easement – Industry Update - Supervisor Anderson stated that once the Town owned the 100 acre parcel, west of the railroad tracks and west of Route 251, a Pure Waters pipe was installed at the Industry pump station that runs parallel to the railroad tracks up to the Town of Henrietta. An easement must be provided in order to maintain the pipe. Monroe County Surveyor Art English has provided a surveyed map designating the pipe. Attorney Mancuso has reviewed the additional mapping and the meets and bounds description of the easement.

**RESOLUTION #69-2014**

Councilperson Steiner moved to grant the Pure Water Easement subject to review of the proposed easement document by the town attorney. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried

B. Preliminary Solar Proposal – Supervisor Anderson stated that Councilperson Frank and Finance Director Reynolds have reviewed the finances and there is no risk in seeking a formal proposal.

**RESOLUTION #70-2014**

Councilperson Frank moved to obtain a formal proposal for the Town of Rush from Solar Energy. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried

C. Zoning Board Interviews – Supervisor Anderson stated that applicants have been interviewed for the open Zoning Board positions. Over the next few days, a decision and notifications will be done. Once the applicants accept, a formal appointment will be made at the next Town Board meeting.

VII: NEW BUSINESS

A. City of Rochester Tax Memorandum of Understanding – Supervisor Anderson stated that Attorney Pavia has reviewed and presented a Memorandum of Understanding regarding parcel comprised of the City's water reservoir located at 1707 Rush Henrietta Town Line Road, Tax #202.02-1-24 for an assessed value slightly higher than the proposed, \$5,500,000.00. The assessment will remain same through 2016.

**RESOLUTION #71-2014**

Councilperson Steiner moved to enter into a Memorandum of Understanding with the City of Rochester which provides for Reservoir, 1707 Rush Henrietta Townline Road, Tax #202.02-1-24 assessed at \$5,500,000.00 through 2016. Councilperson Frank seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried

B. Resolution to Adjourn rezoning proposal of 7262 West Henrietta Road - Attorney Mancuso suggested that since the application for rezoning is still pending, an adjournment to the next Town Board meeting was recommended.

**RESOLUTION #72-2014**

Supervisor Anderson moved to adjourn the proposed rezoning of 7262 West Henrietta Road to the next Town Board meeting. Councilperson Steiner seconded the motion.

Roll:

Councilperson Woolaver	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Supervisor Anderson	aye	carried

### VIII. OPEN FORUM

Supervisor Anderson opened the floor for anyone present to address the Board.

Resident Dave Sluberski stated that the school districts now have the ability to provide tax breaks to veterans. He asked if Rush-Henrietta School District has been provided the information?

Supervisor Anderson noted that the Rush Veterans group has been provided correspondence from the Rush-Henrietta School District, however, a veteran's exemption tax break may not be adopted in Monroe County in the current year.

Agent John Scirabba, representing Rush Associates, LLC requested the process addressing the concerns presented from the audience.

Supervisor Anderson stated that all correspondence and comments will be provided to the applicant, town attorney and Town Board. The Town is awaiting additional data and has provided March 5 as a deadline for letters in support or opposition of the rezoning. Additional time may be warranted before a decision is granted by the Town Board.

Resident Carol Powers had not yet heard of a solar proposal. One firm has approached the town to start a review process and provide grid information. Supervisor Anderson stated that the topic has been on the agenda and discussed at prior Town Board meetings and a formal proposal will be sought. Municipalities need approval before seeking random proposals.

Resident John Morelli suggested looking at competitive solar firms.

Resident Marianne Rizzo asked if the Town would be entertaining a broad concept. Supervisor Anderson stated that the Town Board is in the beginning stages of investigating the possibilities, however, this particular proposal is for municipalities only. The proposal will include town facilities.

Resident Harvey Seymour asked of the property proximity to the power grid. Supervisor Anderson responded that at this point it was nearest to the Industry property on Rush Scottsville Road.

### IX. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor

RUSH TOWN BOARD  
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Anderson at 9:10 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci  
Town Clerk