

BYRON TOWN BOARD MEETING

February 12, 2020

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

- Deputy Supervisor.....Jeff Thompson
- Councilmen.....Sue Fuller
Josh Kent
Eric Zuber
- Highway Superintendent.....David Leaton
- Town Clerk.....Debra Buck-Leaton
- Invited Guests.....Paul Boylan, Esq., Boylan Law Office
- Absent.....Supervisor Yasses
- Public: See attached

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Deputy Supervisor Thompson.

****A MOMENT OF SILENCE WAS OBSERVED FOR FORMER COUNCILMAN JIM CUDNEY****

MINUTES:

A **motion** was made by Councilwoman Fuller to approve the Byron Town Board minutes of January 8, 2020 as written. The motion was seconded by Councilman Zuber and carried with the following vote:

Vote: Ayes: 4 Nays: 0

PLANNING BOARD REPORT – George Squires:

- Continued work on the Solar Law.
- Approved Land Separation for Roger Rouse

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

Vote: Ayes: 4 Nays: 0

SEWER REPORT:

Monthly:

- Checked and maintained all filter bed pumps (N, S+C)
- Keeping track of pump hours on all pumps including Old School House, Walkers Corners and McElver Street lift station
- Took monthly samples

Other:

- Had propane tanks filled at the filter beds for generators.

- On 1/15/2020 called out for high level alarm at 6478 Freeman Road. Replaced pump and piping the next day during daylight hours.
- On 1/17/2020 homeowner at 6400 Freeman Road had a backup. Dug up tank and found nothing wrong on our end.

MRB Group – Waste Water Treatment Plant SPDES:

- These projects are complete. All data requested by the NYSDEC was submitted to the State on January 22, 2020.
- On March 1, 2019 the NYSDEC notified the Town of Byron that effluent disinfection at the three (3) wastewater treatment plants will be required. The first compliance action item is to obtain an approvable Preliminary Engineers Report (PER) detailing disinfection designs. Final engineering design documents are due by 2022 and facilities are to be constructed and operational by May of 2024. The PER is necessary to evaluate all feasible disinfection options for the Town with respect to functionality, reliability, maintenance and cost.
- MRB Group obtained a grant for the Town that will provide up to \$30,000 for the PER and requires a 20% local match.
- On January 21, 2020 MRB Group provided a proposal to generate the required PER. Additionally, a proposal was provided for grant administration on an hourly basis. The Town Board will need to pass resolutions with regard to these proposals at tonight’s meeting.

PROPOSAL FOR PROFESSIONAL SERVICES – WASTEWATER TREATMENT PLANT DISINFECTION ENGINEERING REPORT

RESOLUTION #34:

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

WHEREAS, the Town Board of the Town of Byron hereby authorizes the Supervisor to sign the Proposal for Professional Services for the Wastewater Treatment Plant Disinfection Engineering Report between the Town of Byron and MRB Group in the amount of \$24,900.00.

Councilwoman Fuller seconded the resolution which was adopted by the following vote:

Vote: Ayes: 4 Nays: 0

PROPOSAL FOR PROFESSIONAL SERVICES – WASTEWATER TREATMENT PLANT DISINFECTION STUDY GRANT ADMINISTRATION

RESOLUTION #35:

Councilwoman Fuller offered the following resolution and moved for its adoption:

WHEREAS, the Town Board of the Town of Byron hereby authorizes the Supervisor to sign the Proposal for Professional Services for the Wastewater Treatment Plant Disinfection Study Grant Administration between the Town of Byron and MRB Group in the amount not to exceed \$3,000.00.

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

Vote: Ayes: 4 Nays: 0

A **motion** was made by Councilwoman Fuller to approve the Sewer Report as written. The motion was seconded by Councilman Zuber and carried with the following vote:

Vote: Ayes: 4 Nays: 0

HIGHWAY SUPERINTENDENT’S REPORT:

- Doing repairs
- Had to purchase more salt

A **motion** was made by Councilman Zuber to approve the Highway Superintendent's Report as given. The motion was seconded by Councilwoman Fuller and carried with the following vote:

Vote: Ayes: 4 Nays: 0

CEO/ZEO REPORT – Mike Morris:

·No report submitted

PARK COMMITTEE REPORT –George Squires:

·Working on Park Rules

A **motion** was made by Councilwoman Fuller to approve the Park Committee Report as given. The motion was seconded by Councilman Kent and carried with the following vote:

Vote: Ayes: 4 Nays: 0

HISTORICAL SOCIETY REPORT:

- Discussion regarding history to be included in Bicentennial book
- Next Bicentennial meeting is February 20, 2020
- They are still looking for people to help with the Bicentennial
- The next Historical Society meeting is on March 10, 2020

A **motion** was made by Councilman Zuber to approve the Historical Society Report as given. The motion was seconded by Councilman Kent and carried with the following vote:

Vote: Ayes: 4 Nays: 0

ABSTRACTS

RESOLUTION #36:

Councilman Kent 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	#2	#24 - #48	\$11,368.27
Highway Fund	#2	#12 - #34	\$45,843.90
Sewer Fund	#2	#4 - #7	\$ 8,713.30
Water District No. 7	#2	#4 - #7	\$29,078.70
Water District No. 8	#1	#1	\$ 2,400.00
General Post Audit	#1	#1 - #8	\$ 7,689.44
Sewer Post Audit	#1	#1 - #4	\$ 795.42

Councilwoman Fuller seconded the resolution which was adopted by the following vote:

Vote: Ayes: 4 Nays: 0

TOWN CLERK'S REPORT:

Paid to the NYS Ag and Markets for spay/neuter program.....	\$ 76.00
Paid to NYS Comptroller for Games of Chance.....	\$ 30.00
Paid to the Town of Byron Supervisor.....	<u>\$2,279.40</u>
Total Disbursed for January 2020.....	\$2,385.40

A **motion** was made by Councilwoman Fuller to approve the Town Clerk's Report as given for January, 2020. The motion was seconded by Councilman Zuber and carried with the following vote:

Vote: Ayes: 4 Nays: 0

FINANCIAL REPORT:

The January 2020 Financial Report was reviewed.

A **motion** was made by Councilman Zuber to approve the January 2020 Financial Reports. The motion was seconded by Councilman Kent and carried with the following vote:

Vote: Ayes: 4 Nays: 0

SUPERVISOR'S REPORT:

4th Quarter Sales Tax:

Received 4th Quarter Sales Tax in the amount of \$169,192.96

2020 Committee Appointments:

Audit Committee:

Supervisor Peter Yasses

Councilman Josh Kent

Banking Committee:

Supervisor Peter Yasses

Councilman Jeff Thompson

Disaster Preparedness Committee:

Supervisor Peter Yasses

Councilman Jeff Thompson

Town Clerk Debra Buck-Leaton

Byron Fire Chief Bob Mrueczk

South Byron Fire Chief Brian Hickey

Byron Rescue Squad Brad Nickerson

Highway Superintendent David Leaton

Equipment Committee:

Highway Superintendent David Leaton

Supervisor Peter Yasses

Councilman Jeff Thompson

Insurance Committee:

Supervisor Peter Yasses

Councilman Jeff Thompson

Museum Committee:

Councilwoman Sue Fuller

Historian Bob Wilson

Historian Beth Wilson

Historical Society President

Park Committee Representative:

Councilwoman Sue Fuller

Planning Board Representative:

Councilwoman Sue Fuller

Councilman Josh Kent

Sewer/Water Ordinance Committee:

Councilman Eric Zuber

Buildings Committee:

Supervisor Peter Yasses

Councilman Eric Zuber

Councilman Jeff Thompson

A **motion** was made by Councilman Zuber to approve the Supervisor's Report as given. The motion was seconded by Councilman Kent and carried with the following vote:

Vote: Ayes: 4 Nays: 0

OTHER BUSINESS:

WATER DISTRICT NO. 7

Payment Application No. 4 for Contract 2 is being approved tonight. This is the final Application for Payment and is in the amount of \$16,528.70. This check should be held until MRB Group has notified the Town that all closeout paperwork has been received. This project is complete with the one-year guarantee period running through May 15, 2020 for Contract 1 and through June 21, 2020 for Contract 2.

WATER DISTRICT NO. 7 - CONTRACTOR'S APPLICATION FOR PAYMENT NO. 4

RESOLUTION #37:

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

WHEREAS, the Town Board of the Town of Byron hereby authorizes the Supervisor to sign the Contractor's Application for Morsch Pipeline, Inc. for Payment No. 4 in the amount of \$16,528.70.

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

Vote: Ayes: 4 Nays: 0

WATER DISTRICT NO. 7 AMENDED BOND COUNSEL AGREEMENT

RESOLUTION #38:

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

Resolved, that the Byron Town Board authorizes the Supervisor to sign the Amended Bond Counsel Agreement with Orrick, Herrington & Sutcliffe, LLP with regard to Water District No. 7. The fee for such work shall not exceed \$5,842.00, and fees in connection with any bond anticipation notes will be billed based upon a base fee of \$1,000.00 plus \$.50 per thousand par amount.

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

Vote: Ayes: 4 Nays: 0

WATER DISTRICT NO. 7 COMPLETION

RESOLUTION #39:

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

WHEREAS, the construction of the improvements for the town of Byron Water District No. 7 project have been completed and approved by the NYS Department of Health.

NOW, THEREFORE BE IT RESOLVED, that the Town Board hereby approves final payment to the contractor.

BE IT FURTHER RESOLVED, that the Town of Byron accepts the project as constructed.

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

Vote: Ayes: 4 Nays: 0

WATER DISTRICT NO. 8

This project is complete with the one-year guarantee period running through June 3, 2020.

WATER DISTRICT NO. 8 COMPLETION

RESOLUTION #40:

Councilwoman Fuller offered the following resolution and moved for its adoption:

WHEREAS, the construction of the improvements for the town of Byron Water District No. 8 project have been completed and approved by the NYS Department of Health; and

WHEREAS, the Town Board has previously approved final payment to the contractor.

NOW, THEREFORE BE IT RESOLVED, that the Town of Byron accepts the project as constructed.

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

Vote: Ayes: 4 Nays: 0

WATER IMPROVEMENT BENEFIT AREA NO. 1:

All work associated with the Grant Application is completed and submitted to USDA Rural Development. Dawn Kuras will schedule a meeting with the Town to discuss the project in the near future.

PUBLIC COMMENTS:

Jim Lamkin – He would like to present the Town Board with an additional 96 verified signatures – making a total of 304 signatures against the solar project. A lot of people say they still don't know about this project.

Councilwoman Fuller – Senator Ranzenhoffer and Assemblyman Hawley have written letters asking for an Ad Hoc member be appointed to the Siting Board. New laws that the State is mandating are going to cost not only the County, but Towns more money.

Councilman Zuber – He has drafted a letter to Commissioner Alesi and would like the Town Board to sign it and have it emailed.

Councilwoman Fuller – Read letter from the Genesee County Board of Ethics (see attached) to the public in attendance.

Dawn Clark – How long does the PILOT program last

Town Attorney Paul Boylan – As long as the project lasts. He will be negotiating the PILOT and Host Agreements.

A **motion** was made by Councilwoman Fuller to send a copy of the letter that Councilman Zuber drafted to Commissioner Alesi. The motion was seconded by Councilman Kent and carried with the following vote:

Vote: Ayes: 4 Nays: 0

Candy Hensel – She would suggest letting one of the newspapers know that the letter was sent out.

Councilman Kent – Asked whether the Town should be considering a moratorium on wind? They can also be Article 10.

Attorney Paul Boylan – He will draft a moratorium for wind. The siting board can override setbacks made in the zoning law in an Article 10 project.

Catherine Mathes – How will this project affect property values?

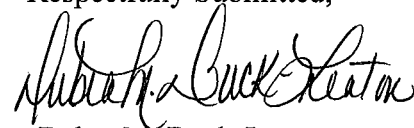
Attorney Paul Boylan – We won't know until after the project is done

ADJOURN:

A **motion** was made by Councilman Kent to adjourn the Byron Town Board Meeting at 8:19 p.m. The motion was seconded by Councilman Zuber and carried with the following vote:

Vote: Ayes: 4 Nays: 0

Respectfully Submitted,



Debra M. Buck-Leaton
Byron Town Clerk

Town of Byron Town Board Meeting
February 12, 2020

<u>Name</u>	<u>Address</u>
1. <u>Willy Lyndell</u>	<u>6950 Wilson Rd</u>
2. <u>Candace Hensel</u>	<u>Swamp Rd.</u>
3. <u>Michelle Piasecki</u>	<u>Harris Beach for Excelsior Energy</u>
4. <u>Karson Richenberg</u>	
5. <u>Eric Richenberg</u>	
6. <u>RICHARD GLAZIER</u>	<u>7241 BNT-Byron Rd</u>
7. <u>Jim Felm</u>	<u>6265 Linn Old Byron</u>
8. <u>Vic DiByn</u>	<u>Warboys Rd</u>
9. <u>Kathlyn Maucha</u>	<u>64109 Swamp Rd Lot 44</u>
10. <u>Bill Boer / NextEra Energy</u>	
11. <u>Eileen Pickett</u>	<u>Caswell Rd Byron</u>
12. <u>Gayla Starowitz</u>	<u>7223 Caswell Rd, Byron</u>
13. <u>Doug Smith</u>	<u>7335 Beaver Meadow Rd.</u>
14. <u>Wendy Focht</u>	<u>7491 Byron Holly Rd</u>
15. <u>George Squires</u>	<u>6860 McElver St.</u>

NameAddress

16. Dawn Clark 5802 COCKRAM Rd.
17. Daniel Clark " " "
18. Kaitlyn Chmielowiec 6557 Townline Rd
19. Paul Chmielowiec "
20. Karen Goodwin 5552 Cockram Rd
21. Carrett + Val Rusin 5948 Cockram
22. Bradford Nickerson 5597 Cockram Rd
23. David & Patty Kent Insin Rd, Byron
24. Amanda Jack 5594 Walkers Crn Rd Elba 14058
25. Nick Weibel " "
26. Karen & Lou Eysaman 6037 Townline
27. Rebecca Yerger 6850 Byron-Holley Rd.
6937 Townline
28. Louis Eysaman ~~6000 Downing Dr P.O.~~
29. Kristy Murphy 6951 Insen Road Byron
30. JIM WELCH 7229 TRANSIT RD.
Babie Starout Bank St Rd
Catherine Homrig 6142 N. Byron Rd



Genesee County Board of Ethics

Old Courthouse
7 Main Street
Batavia, New York 14020-3199
(585) 344-2550 Ext. 2202
Fax: (585) 345-3078

Mark S. Boylan, Esq., Chair
Teresa Morasco
Anthony Condello
Henry T. Darocha
Michelle Dills

January 22, 2020

Town Board, Town of Byron
P.O. Box 9
7028 Byron Holley Road
Byron, NY 14422

RE: Conflict of Interest Recommendations

Dear Council Members,

The Genesee County Board of Ethics has been asked to make a recommendation to the Byron Town Board as to whether two sitting council members have interests that compromise their abilities to make decisions solely in the public interest.

Article 12 of the General Municipal Law governs conflicts of interest of Municipal Officers and Employees. In addition to these laws there are numerous common law cases where courts have ruled on the issue of conflict of interest as well as multiple Opinions of the Office of the New York State Comptroller that address the issue.

Generally speaking Municipal Officers (and Employees) must avoid situations where there is a personal benefit (i.e. a personal interest) to be gained from rendering a particular decision in their capacity as a Municipal Officer.

Under Section 809 (2) of the General Municipal Law a person is considered to have an interest when: "he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them (a) is the applicant, or (b) is an officer, director, partner or employee of the applicant, or (c) legally or beneficially owns or controls stock of a

corporate applicant or is a member of a partnership or association applicant, or (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

Furthermore, courts have held that a person must be disqualified from voting on a particular matter when their interest is a personal, private interest and not such an interest as he or she has in common with all other citizens or owners of property. *Byer v. Town of Poestenkill*, 232 A.D. 2d 851 (3d Dept 1997).

Also, a 1979 case *Matter of Tuxedo Conservation & Taxpayers Association v. Town of Tuxedo* (2d Dept 1979) the court rendered the opinion that "the test to be applied is not whether there is a conflict, but whether there might be...It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest."

Based on these laws and information we have been provided by the Town Board and its counsel, we make the following recommendations:

With respect to Councilman Eric Zuber, it is this Board's recommendation that he in fact has a conflict of interest such that he should recuse himself from the Town Board's consideration of the Excelsior Energy application.

This recommendation is based on his communications with the Town Board (copy attached) as well as other public comments in the Batavia Daily News (see January 10, 2020 edition) that raises the issue that the matter is a personal, private one affecting his business that sets him apart from the personal financial interest in the outcome of the application such that he should remove himself from any and all discussions and votes that involve the Excelsior Energy application before the Byron Town Board.

With respect to Councilman Joshua Kent it is this Board's recommendation that he recuse himself from the Town Board's consideration of the Excelsior Energy application on the basis that a member of his family has an interest in the Excelsior Energy application.

As it was described in the letter to the Ethics Board, with some misstatements of fact, later clarified by the Town Board's attorney, Mr. Kent's stepmother has an interest in L-Brooke Farms, one of the farms that has an agreement with Excelsior Energy to locate solar panels on its property should the application to the Town be approved.

This circumstance appears to violate General Municipal Law Section 809 (2) as described above, requiring Mr. Kent's recusal despite the fact that Mr. Kent himself would not apparently derive a personal benefit from the approval of the application.

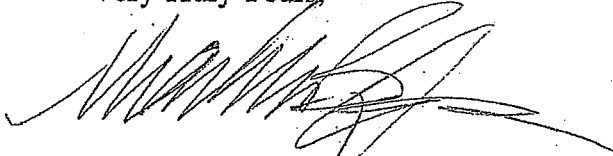
Even if it could be argued that Mr. Kent should not have to recuse himself on this basis he would fail the test based on the Tuxedo case above. The test being not whether there is a conflict but whether there might be. It is therefore strongly recommended that all

elected officials avoid even the appearance of impropriety, including Mr. Kent under these circumstances.

In conclusion The County Ethics Board would like to strongly suggest that the Town of Byron enact their own Code of Ethics as required under Section 806 of General Municipal Law and appoint its own Town Board of Ethics as recommended under Section 808 of General Municipal Law to address any ethical concerns in the future.

If you have any questions or concerns regarding this matter please feel free to contact us.

Very Truly Yours,



Mark S. Boylan, Chairman
Genesee County Board of Ethics

BOYLAN LAW OFFICE, LLP

ATTORNEYS AND COUNSELORS AT LAW
P.O. BOX 307, 45 WEST MAIN STREET
LE ROY, NEW YORK 14482-0307
(585) 768-8148 FAX (585) 768-7738

PAUL S. BOYLAN*
LAURENCE W. BOYLAN
MARK S. BOYLAN
*ALSO ADMITTED IN FLORIDA

PAUL A. BOYLAN
(1902-1997)

February 3, 2020

Town Board of Town of Byron
7028 Byron Holley Road
P.O. Box 9
Byron, NY 14422

Dear Board Members:

The County Board of Ethics has ruled that both Mr. Zuber and Mr. Kent have conflicts of interest; Mr. Zuber because he will by his admission be economically harmed if the Excelsior project is approved, and Mr. Kent because a member of his family, his stepmother, will be economically benefited if the project is approved. Ms. Fuller has been previously disqualified because her signing an option to lease property she owns would economically benefit her if the project is approved.

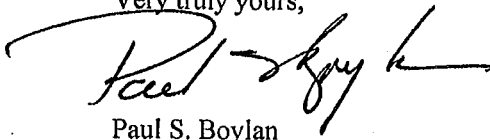
This circumstance means that three of the five members of the Board have discernable conflicts of interest and under ordinary circumstances would be prohibited from participating in any discussion regarding and voting to take any action regarding to the project. The Board would not be able to establish a quorum and thus would be unable to take any action regarding the project.

Under such circumstances as exist here the Board must invoke what is known as The Rule of Necessity. Simply stated, the Rule says a judge, court, official, or Board may take action with the participation of a conflicted individual or individuals if their disqualification would make it impossible to take any action or render any judgment.

One of the conflicted members of the Board has a conflict that would benefit her and another member has a conflict that would damage him if the project were approved. It is my opinion that both Ms. Fuller and Mr. Zuber may participate in decisions regarding the project. It is my further opinion that Mr. Kent may also participate since to preclude him from participating would be inconsistent given the permitted participation of the other conflicted members. This would also give the Board an odd numbers of members to reduce the possibility of a deadlocked vote.

In summary, it is therefore my opinion that all elected members of the Town Board may fully participate in decisions regarding the solar project by invoking the Rule of Necessity.

Very truly yours,



Paul S. Boylan

PSB:ds