

TOWN OF HORSEHEADS
TOWN BOARD
October 26, 2022
8:30 A.M.

The regular monthly meeting of the Town Board of the Town of Horseheads was held on the above date at 8:30 A.M. at the Town Hall, 150 Wygant Road, Horseheads, New York.

Members Present: Donald J. Fischer, Supervisor, Carl R. Lewis, Sr., Gary H. Riopko, Stephen E. Wilber and Donald Zeigler

Members Absent:

Others Present: John P. Mustico, Town Attorney; Cathy Wood, Deputy Town Clerk; Greg Larnard & Dave Murray, Code Enforcement Officers; Teresa Lyons, Town Assessor; Peggy L. Woodard, 8th District Legislator; Mark Margeson, 5th District Legislature; Scott Lowmaster, Journey Church; Joseph J. Sliwa, Tim Rodabaugh, Mary Lou Spencer, Craig L. Spencer, Lori S. Lee, Jennifer Johnson, Andy Johnson, Scott Manwaring and Darlene Manwaring, Residents

Supervisor Fischer called the meeting to order at 8:30 A.M.

At this portion of the meeting, Supervisor Fischer began the meeting explaining various noise complaints were received regarding Journey Church, The L. Supervisor Fischer opened the floor to anyone attending the meeting wishing to express their concerns to the Town Board to come forward.

Tim Rodabaugh, Maplehurst Trailer Park, 34 Breesport Rd., Lot 47 – commented he has been bothered by the noise since early 2021. He has dropped paperwork off to the Town Supervisor, tried to communicate with Mr. Wilber and spoke with the code officer Mr. Larnard. He has kept a log of occurrences and can provide a copy to anyone who would like one. He questioned why can't anything be enforced? Are they operating as a church or business? Concerns with liquor being served. Do they have a liquor license? Are they zoned for everything they are doing? Mr. Rodabaugh handed to the Town Board a petition signed by residents reflecting their disgust with the activities located at The L, 116 Breesport Road, Horseheads, NY.

Joseph J. Sliwa, 34 Breesport Rd., Lot 44 – questioned is this a church that is taxed or are they non-taxable. He went through this nine years ago with the same church and pastor. He didn't bring it to the Town Board at that time. He did call the sheriff's department several times with no resolution. The noise makes it extremely hard to sleep. Mr. Sliwa uses a sleep apnea mask, ear plugs and noise canceling headset. Having to sleep this way is ridiculous. He is asking for code enforcement. Why can't the noise ordinance be enforced?

John P. Mustico, Town Attorney - replied the church is tax exempt. The owner of the property is Journey Church Inc.

Andy Johnson, 742 E. Franklin St. – questioned how can they be tax exempt when they advertise themselves as a concert venue their website, Facebook page and on billboards, that have nothing to do with gospel music. This noise has been going on for a while. He has made several complaints to code enforcement. He and his wife have called the State Police several times to enforce the noise ordinance with no luck. He also contacted the Sheriff's Department with no relief. The Town Ordinance states 50 feet from the building any noise that is plainly audible. He stated Mr. Fischer was at his house which is approximately ¼ to ½ a mile away. The noise was plainly audible that day. In his living room it sounds like he is stopped at a red light and a car pulled up next to him with the big subwoofer booming. He has young children to get to bed for school. He and his wife both work. The booming noise penetrates throughout his house. Last night, the noise went on past 9:00 p.m. on a Tuesday. It stopped just before 11:00 p.m. What is the zoning? The noise ordinance states 9:00 p.m. He is looking for relief.

Jennifer Johnson, 742 E. Franklin St. – would like to re-iterate what her husband stated. The noise is so loud. The noise machines and turning the tv up doesn't work. They have 2 small kids so ear plugs are not an option. This has been going on to long and they have tried many different paths to address this. They are looking for relief to make this situation better for all involved.

Lori Lee, Maplehurst Trailer Park, 34 Breesport Rd., Lot 41 – stated that residents are not hearing music or getting a free concert. The noise is a bumping noise like you hear when cars go by with loud bass. Imagine that noise going on for hours. Second concern is with the sale of alcohol at these events and a speed limit of 55 mph. Alcohol and a speed limit of 55 mph that close to their homes is dangerous. The noise is extremely annoying. It shakes her house.

Mary Lou Spencer, 697 E. Franklin St. – stated they are located directly behind Journey Church. They have lived at this address for over 40 years. It has been an excellent experience except for the past couple of years. They have tried to be patient and good neighbors. But the noise continues. It is not just once a month or once a week. It can be 3 nights in a row. They hear the noise that the neighbors are describing in their back yard all the time. What is their area zoned as? What is the noise ordinance? She is also concerned about the traffic that comes in for the concerts. Is this a church activity? Or is this a separate entity coming into the site? She experienced an incident where people, a little bit disoriented, were wondering on her property looking for the concert. She is very concerned about the neighborhood and the living conditions in her neighborhood.

Peggy Woodard, Chemung County 8th District Legislator – stated she was contacted by several people asking her to voice their concerns and speak on their behalf. Hoping to get them some relief. An issue that hasn't been mentioned yet is people leaving late at night. They are squealing tires and honking horns. It's not just the music noise. There is a lot of noise in general.

Joseph J. Sliwa, 34 Breesport Rd., Lot 44 – stated these music venues are not attracting the quality of society. It is his understanding that they will be having mixed martial arts cage fighting. He is concerned for his neighborhood. It used to be peaceful.

Lori Lee, Maplehurst Trailer Park, 34 Breesport Rd., Lot 41 – commented referencing the cage fight held at the Arnot Mall. As a result of the cage fight, an actual riot broke out.

Andy Johnson, 742 E. Franklin St. – referenced zoning and asked how it went from zoning of residential to now having an event center with a concert venue.

John P. Mustico, Town Attorney - explained that in 2020 the Town Board considered the request by Journey Church to rezone their 7 acres to a Planned Unit Development. This would allow other things to happen at the time other than for church use. A copy of that resolution can be provided to anyone who wishes a copy. The resolution passed permits all uses permitted in a Residence A zone. A church is permitted use in a Residence A zone. Also approved under that resolution was the use of professional offices defined as “characterized by or conforming to technical or ethical standards of a profession requiring licensing by the State of New York or certifications of education behind high school such as financial consultant, accountant, tutor, artist, computer consultant, doctor, attorney, speech therapist, physical therapist and hearing therapist. That was the extent of the approval. The Town did correspond and express their concerns with Journey Church’s attorney, Reverend Keesha, who is located in Dallas, via phone conference. A letter of opinion was received from Reverend Keesha. A copy is available. This letter connected Journey Church Inc. together with IMATTER Foundation, which is a mission of the church, claiming it is part of their religious ministry. So, basically, any activities at the church that raise money for IMATTER are allowed under what was approved pertaining to their original PUD request. Concerts were not part of the original approval.

Churches do run events. The question is how often? Are these events in fact church events? From the advertising, it appears the church has nothing to do it. There are other groups, such as “The L” or “Blue Group?” running these events, which is something else the Town Board will be considering. This topic is not the same as the noise ordinance.

Andy Johnson, 742 E. Franklin St. – commented they are reporting themselves as a concert venue. It is on their website. It can be changed overnight. If they are considering mixed martial arts, is that a church function? He referenced several band names. He is familiar with IMATTER. Having events once or several times a year is different than having events several times a week. He would still be annoyed by the noise if it was happening every weekend. Now it is happening several times a week. He appreciated the information regarding the church’s attorney’s letter of opinion.

John P. Mustico, Town Attorney - commented some church events are expected such as festivals or bazaars. What is going on is beyond expectations of church activities. The Town Board is having discussions regarding enforcement. John will, as a courtesy, will give their attorney a heads up. Code enforcement was also at the meeting regarding the noise complaints. John P. Mustico explained to all complaints need to be in writing. As far as enforcement, Journey Church Inc., the owner, will receive the ticket. When there is an event, Code could ticket for the noise ordinance, the actual purveyor of the noise, the group. The noise ordinance will only result in a fine. The noise ordinance comes to the Town of Horseheads Court. The Town’s Court has no authority to enforce an injunction to stop what is going on. In order to do

that, the Town would have to start an action against the church in supreme court. Supreme court can issue an injunction. John explained what could happen in supreme court and that it would be a process. He also explained, as an option, that the citizens could act to enforce the zoning if the Town does not. The citizens would fund this process.

Andy Johnson, 742 E. Franklin St. – commented that for the time being, Code Enforcement could issue a ticket. The presumption would be the church would pay the fine and continue with holding concerts.

John P. Mustico, Town Attorney – explained what the general penalties or fines are and the process. He also explained, residents need to file complaints. If this were to go to trial, witnesses are needed to testify under oath.

Someone attending needed clarification of Residential Code in their area and whose is responsible for enforcing that code and there is a noise ordinance. Is a concert venue allowed in their area? She also asked if church functions were separated from the concert venue could the code be enforced and what would be the penalties?

John P. Mustico, Town Attorney – The penalties are the same. A business use is not allowed other than what is set out in the code. He further explained the Town would be looking at what are church functions and what are not and what the church is allowed to do in a Residence A zone. John is in discussion with code to determine if the church is holding events that go beyond the expectations of church functions. The events being held is not for the church but for IMATTER which is not the church. Now there are several groups operating such as The L and Journey Center Inc. to name a few. The Town felt it was helping the church out by allowing the PUD amendment. The professional offices were the first step. Now there is a concert venue, fitness center and possibly a barber shop. Space is being rented out that go beyond the original approval.

Joseph J. Sliwa, 34 Breesport Rd., Lot 44 – commented the church does not project Christian values. The resolution for this is simple, just turn it down.

Darlene Manwaring, 730 E. Franklin St. – commented this is a serious matter. The area is country. Quiet and nice. Windows can't be opened at night to watch tv. She questioned if the Town Board members looked at the churches website to see what is coming. She suggested Board Members look at the photos. She has lived there for almost 38 years. She also deals with the obnoxious lighting. Her concern is how does a church that has been there forever and turn it into a concert venue. Based on who the bands are, she questions what is going on. Moving forward should she call the police or Town Supervisor?

John P. Mustico explained each incident is a separate incident and confirmed that with Greg Larnard, code enforcement officer. Forms are available in the code office and there is a complaint form on the Town website.

Andy Johnson, 742 E. Franklin St. – stated he called the police at least 7 times with no results. He works for the City of Elmira and they enforce local ordinances. He has emailed the code office several times. Why can't ordinances be enforced in the Town of Horseheads?

Supervisor Fischer asked code officers Greg Larnard and Dave Murray if the Town's noise ordinance was sent to the State Police and Sheriff recently. Greg Larnard stated he spoke to them, told them it was online and would send each entity a copy.

John P. Mustico, Town Attorney - found that the only criminal aspect he could find is maybe a nuisance ticket and not sure of that. Maybe the Town will reach out to the police entities and make amendments if necessary.

Andy Johnson, 742 E. Franklin St. – commented it can't get them to act on it. He worked for 911 for 3 years and would send police to noise complaints. He also worked with the fire department and would go to open burning and enforce the ordinance. He would assume the ordinance in Horseheads could be enforced the same way. He is not getting anywhere with police and has contacted police.

John P. Mustico, Town Attorney - maybe the Town will reach out to policing entities and make amendments if necessary.

Someone attending also mentioned in addition to the noise from planned events, there is noise on other nights. She is assuming the noise is from groups practicing. The noise issue is not just on the concert nights.

Supervisor Fischer, at this point of the meeting, asked if there is anyone else who wishes to comment. This issue will not fall on deaf ears. The process will take some time. He thanked all for attending the meeting and voicing their opinions.

Someone attending stood up and stated that it's a shame this couldn't be worked out like neighbors should. She appreciated the Board taking the time to meet with them.

At this portion of the meeting, Supervisor Fischer stated no other contact or information was received regarding the Threat Assessment Management Team. It is a state mandate.

A motion was made by Mr. Lewis and seconded by Mr. Wilber to table this item until November 23, 2022.

Ayes: Lewis, Riopko, Wilber, Zeigler and Fischer. Nays: None.

Supervisor Fischer informed Board Members that the contract with Direct Energy ends November of 2023. The Town's rate is locked in until that date. Apparently, rates are going up and Direct Energy would like the Town to extend that contract now by locking in with a different rate. Via e-mail, the proposed rate at this time is .07771. The current rate is .05885. By not locking in at this time, the new proposed locked in rate could be higher or lower when the current contract ends. No action at this time.

10/26/22 T.B.

At this portion of the meeting, the discussion began regarding the demolition contract for 3085 Butler Avenue. Much discussion took place regarding the slab and asbestos abatement. The LCP Group and Vanderhoff Construction submitted quotes for demolition. The quotes are for the house not the 2 sheds. The sheds are not included in this process and show no signs of infestation at this time. The only thing being abated at this time is the house. The process to shut down all utilities to the property has begun.

Resolution #126 of 2022

**RESOLUTION TO SET PUBLIC HEARING FOR
DECEMBER 14, 2022 AT 7:00 P.M. REGARDING THE
CONTRACT WITH FIRE PROTECTION DISTRICT #1 (TOWN & COUNTRY)**

Resolution by Mr. Wilber, seconded by Mr. Lewis

BE IT RESOLVED, that the Town Board of the Town of Horseheads hereby sets a public hearing for December 14, 2022 at 7:00 P.M. to consider the Contract with Fire Protection District #1 (Town & Country) in the Town of Horseheads.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

As there was no further business to come before the Board, a motion was made by Mr. Wilber, and seconded by Mr. Lewis to adjourn this meeting at 9:40 A.M., to the call of the Supervisor, to be held October 31, 2022 at 4:00 P.M.,

Ayes: Lewis, Riopko, Wilber, Zeigler and Fischer. Nays: None.

10/31/22 T.B.

The regular monthly meeting of the Town Board of the Town of Horseheads held on the October 26, 2022, 8:30 A.M. at the Town Hall, 150 Wygant Road, Horseheads, New York, reconvened on October 31, 2022 at 4:00 P.M.

Members Present: Donald J. Fischer, Supervisor, Carl R. Lewis, Sr., Gary H. Riopko, Stephen E. Wilber and Donald Zeigler

Members Absent:

Others Present:

Supervisor Fischer called the meeting to order at 4:00 P.M.

At this portion of the meeting, Supervisor Fischer began the discussion regarding the demolition contract for 3085 Butler Avenue. Much discussion took place regarding the quotes received from the LCP Group and Vanderhoff Construction.

Resolution #127 of 2022

**RESOLUTION ORDERING REMOVAL OF STRUCTURES LOCATED AT
3085 BUTLER AVENUE**

Resolution by Mr. Wilber, seconded by Mr. Lewis

WHEREAS, pursuant to the Unsafe Buildings Local Law of the Town of Horseheads, the Code Enforcement Office of the Town of Horseheads met with the Town Board on August 24, 2022, to discuss their findings and recommendations regarding certain structures situate on premises known as 3085 Butler Avenue, Town of Horseheads, Chemung County, NY designated by Tax Map No. 69.14-3-6, and

WHEREAS, by way of Resolution #110 of 2022, the Town Board of the Town of Horseheads accepted the report of the Code Enforcement Office and determined that said structures were unsafe and required securing and removal and directed notice to be sent William Hill, the Administrator of the Estate of Beverly Hill, and

WHEREAS, the Notice to Landowner to Remedy was prepared by the Town Clerk and mailed to William Hill, Administrator of the Estate of Beverly Hill on August 31, 2022, the Affirmation of Mailing is on file, and

WHEREAS, the Notice to Landowner to Remedy was also filed “Lis Pendens” with the Chemung County Clerk’s office on August 31, 2022, and

WHEREAS, the Notice to Landowner to Remedy, dated August 31, 2022, was posted on said structures and Affidavit of Posting, Posting of Notice is on file, and

WHEREAS, the Notice to Landowner to Remedy was personally delivered to William Hill, Administrator of the Estate of Beverly Hill, on September 1, 2022, and the Affidavit of Service is on file, and

WHEREAS, a time stamped copy of the Notice to Landowner to Remedy was received on September 14, 2022 from the Chemung County Clerk’s office and placed on file, and

WHEREAS, a Public Hearing was held on September 14, 2022 at the Town of Horseheads Board meeting, duly advertised the same in the Elmira Star Gazette on September 2, 2022, and

WHEREAS, all parties appearing were heard and no representative having interest in the Estate of Beverly Hill appeared, and

WHEREAS, by way of Resolution #113 of 2022, the Town Board ratified Resolution #110 of 2022, approving the removal of the structures located at 3085 Butler Avenue and authorized the Town Supervisor to sign a contract with Jellison Pest Control for the extermination of cockroaches, and

WHEREAS, the Code Enforcement Office following the Town of Horseheads Procurement Policy received demolition estimates, and presented the same to the Town Board, and

WHEREAS, on October 26, 2022, the Town Board of Horseheads held a meeting and began discussion with regards to Demolition Quotes received, and

WHEREAS, this meeting was adjourned to the call of the Supervisor, and

WHEREAS, on October 31, 2022, at 4:00 P.M., the Town Board of Horseheads held a meeting to review final quotes, and

WHEREAS, the Town Board duly considered the same,

NOW, THEREFORE BE IT RESOLVED, that upon the receipt of the final written quotes the supervisor is hereby authorized to accept the lowest quote, and authorizes the Town Supervisor to execute a contract with the lowest quote for the removal of structures and cleanup of premises located at 3035 Butler Avenue, Town of Horseheads, Chemung County, New York, and be it further,

RESOLVED, pursuant to Unsafe Buildings Local Law the Town Board of the Town of Horseheads hereby directs that all costs and expenses incurred by the Town in securing and repairing or demolishing and removing the building which have been paid by the Town at the direction of the Town Board shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and collection of special ad valorem tax, and be it further,

Ayes: Lewis, Riopko, Wilber, Zeigler and Fischer. Nays: None.

A discussion was held regarding the 2023 Preliminary Budget.

As there was no further business to come before the Board, a motion was made by Mr. Wilber, and seconded by Mr. Zeigler to adjourn at 4:16 P.M.

Ayes: Lewis, Wilber, Zeigler and Fischer. Nays: None.

Respectfully Submitted,

Nancy C. Rohde, Town Clerk