

The meeting was called to order by Supervisor Tyler at 7:00 p.m.

Members present on a roll call were:

Councilperson Brankman
Councilperson Kirkby (excused)
Councilperson Morrison
Councilperson Viens
Supervisor Tyler

Others present:

Keven Severance, Highway Superintendent
Catherine L. Simmer, Town Clerk
George Hainer
Shannon Bauman
Waldemar Kasriels
Chris Maron

YOUTH COMMISSSION: Shannon Bauman is present to update the board and answer questions. Discussion about baseball. There was a problem with communication and a coach. They are working to resolve the situation and avoid something like this in the future. Shannon would like to see positive role modeling for the young athletes. Supervisor Tyler thanked Shannon for her hard work and being present. Councilperson Viens echoed Supervisor Tyler's sentiments. Councilperson Morrison offered his apologies for missing the youth commission meetings for April and May. He plans to attend the June meeting.

RESOLUTION # 86
APPROVAL OF MINUTES

On a motion by Councilperson Viens seconded by Councilperson Morrison, and approved on an all in favor vote.

4 Ayes Brankman, Morrison, Viens Tyler
0 Nays

RESOLVED to accept the minutes of the May 24, 2022 regular meeting as received.

PUBLIC COMMENT: Supervisor Tyler asked the Town Clerk to read aloud a letter submitted by a resident to Supervisor Tyler and the Zoning and Codes Officer concerning the sign on Stevenson Rd. Lengthy discussion concerning the sign on Stevenson Rd and Land Use Laws pertaining to the sign. Supervisor Tyler read aloud information submitted to the Town Board by George Hainer, Zoning and Codes Officer in response to resident complaints. Mr. Hainer's response is attached permanently to the minutes. Supervisor Tyler and Mr. Hainer have spoken to a few attorneys' each of which have advised them to update the Land Use Law referencing "signs" before enforcing any sign complaint.

Mr. Maron was present to share his concerns about the illuminated sign on Stevenson Rd. Mr. Hainer explained that this is a very complicated issue and he is not willing to enforce any sign laws until the Town Land Use Law has been rewritten. He offered information for residents to pursue enforcing this on their own when the Zoning Officer won't act. Attached permanently to the minutes is this information for residents (2pages) which includes a breakdown of the formal complaints. Mr. Hainer also explained that residents wanting to pursue this matter further on their own must be taxpayers in the same district as the sign owner, which is AL31.020. Supervisor Tyler stated that the Town will be updating their law before enforcing any "sign" laws. The Town will work with attorneys' and the planning board to ensure they are protected moving forward. Mr. Hainer stated that this is a free speech issue and residents have no way to express themselves on their own property under the current sign section of our current Land Use Law. Mr. Hainer has spoken with the APA and this is not their jurisdiction unless it is part of a project permit they have issued. Mr. Hainer reminded everyone what seems to be simple is not, this is a very complicated issue. Supervisor Tyler reiterated that they will be working with an attorney and he will have more information for the board within the coming weeks.

RESOLUTION # 87
APPROVAL OF BILLS

On a motion by Councilperson Brankman, seconded by Councilperson Viens, and approved on a roll call vote.

4 Ayes Brankman, Morrison, Viens Tyler
0 Nays

RESOLVED to authorize the payment of bills on Abstract #13 in the amount of \$21,770.43 for Vouchers 284-310.

THE TOWN BOARD IS IN RECEIPT OF MAY MONTHLY REPORTS FOR:
Westport Town Court
Westport Town Clerk's
Westport Town Supervisor Report

RESOLUTION #88
PURCHASE LEICA GEOSYSTEMS

On a motion by Councilperson Viens seconded by Councilperson Brankman, and approved on a roll call vote.

4 Ayes Brankman, Morrison, Viens Tyler
0 Nays

RESOLVED to purchase Leica Geosystems for \$5,218.00.

**RESOLUTION #89
LOCAL WATERFRONT REVITALIZATION GRANT**

On a motion by Councilperson Brankman seconded by Councilperson Morrison, and approved on an all in favor vote.

4 Ayes Brankman, Morrison, Viens Tyler
0 Nays

WHEREAS, The NYS Department of State has made grant funds available in 2021, through the Local Waterfront Revitalization Program (LWRP), which provides grant funds on a competitive basis to eligible Villages, Towns, Cities, and Counties located along New York's coast of designated inland waterways to revitalize communities and waterfronts through planning, design, and construction projects. State assistance awarded and paid shall not exceed 75% of the total eligible costs set forth in the application; and

WHEREAS, Westport has agreed to serve as the applicant in the submission of a regional LWRP grant in creating waterfront revitalization projects throughout the town and intends to file a grant application for funding in an amount not to exceed \$95,000, which would be used to offset the total cost of this project. A match requirement of 25% of the total project cost is required; and

BE IT RESOLVED, that the Town Council of the Town of Westport hereby authorizes our participation in this 2021 Essex County LWRP grant to implement the above-referenced project, and to provide a 25% match requirement in an amount not to exceed \$23,750

DPW SUPERINTENDANT REPORT: The Decker Road is ready for paving, weather permitting the County gave us a June 27th paving date. There is a concern with one homeowner on Decker Rd. We are doing our best to work with this homeowner to take care of their concerns. Three members of the highway department have looked at this property after raining hard and the water is not getting to the house. We have decided on a build location for the grader shed. No news on the truck with the bad engine. Chris Clark is working with a machine shop to see if they are able to rebuild the engine. We are trying to come up with options going into winter if the truck can't be repaired. We are trying to plan ahead and get prices for a new truck. This truck was going to be replaced in the next couple of years so we are looking at all options. The top soil has been spread and graded at the Wadham's sewer site. Soil and water will be seeding the site.

COUNCILPERSON VIENS inquired about the paving at the Depot Theater. Superintendent Severance has spoken with the county crew and they may be agreeable to paving the parking lot.

SUPERVISOR TYLER COMMENT: We are in receipt of communications from Charter.

COUNCILPERSON MORRISON would like to wish all the father's a very Happy Father's Day.

PUBLIC COMMENT: Chris Maron thanked the board for the discussion.

RESOLUTION #90

ADJOURNMENT

On a motion by Councilperson Brankman, seconded by Councilperson Viens the meeting adjourned at 7:49 p.m.

4 Ayes Brankman, Morrison, Viens Tyler

0 Nays

Minutes respectfully submitted,

Catherine L. Simmer, Town Clerk

To: Supervisor Tyler and Town Board Members

With regards to the sign complaint at 897 Stevenson Road Adirondack Acres LLC

Under our law this **type of sign is not considered a sign**- the definition of a sign is

Sign: Any writing (including letter, word, or numeral), pictorial representation (including illustration, decoration, emblem, symbol, or trademark), flag (including banner and pennant), bulletin board, statue, three dimensional figure, symbolic or representational structure, or any other visually communicative or expressive device which:

The term shall not include: (If it looks like a duck and acts like a duck it's a duck) A sign is a sign

a. Signs of a duly constituted governmental body, including traffic or similar regulatory devices, street identification signs and legal notices.

b. Flags or emblems of a political, civic, philanthropic, educational, or religious organization.

c. Signs specified or required to be maintained by law or governmental order, rule, or regulation.

These mobile highway traffic signs are used by municipal highway departments, private non-government construction contractors, not for profits, individuals, and other entities to display other than highway traffic notices, we have allowed them in the past to display other commercial and non-commercial speech and therefore these types of mobile signs have been allowed and we have not treated them as signs under our law. These signs are designed not to cause beams of light to be cast upon any public highway, sidewalk, or adjacent premises, or to cause glare or reflection that may constitute a traffic hazard or nuisance, they use amber light not white light so they are more environmental friendly.

It has come to my attention that the larger issue is our sign ordinance section 10 of our Land use law. There were two major Supreme Court cases that shape sign laws and I think our law escaped a necessary update required by those rulings.

The first case was decided in 1994 (our law was finished drafted in 1994 and went into effect Jan 1, 1995).

City of Ladue v. Gilleo, 512 U.S. 43 (June 1994) – The U.S. Supreme Court struck down a Ladue, Missouri, ordinance that **prohibited all residential signs**, except those falling within certain specific exemptions such as small "residential identification" signs and signs advertising the sale, lease, or exchange of property. The Court concluded that the ordinance violated the First Amendment's free speech protection by suppressing too much speech. *(Our law doesn't allow ideological signs it restricts freedom of speech as guaranteed by the U.S. and State constitutions)*.

The second Case was in 2015 The U.S. Supreme Court decision, *Reed v. Gilbert* (June 2015), prompted the need for most local governments to redraft their sign codes, because the typical method of regulating signs by content-type (such as political, ideological, directional, etc.) was deemed unconstitutional. *(Our sign ordinance mimics this in so many ways.)*

It is noted by most higher agencies that:

If your jurisdiction has not updated its sign code following the *Reed* decision, use caution in enforcing your existing sign regulations—especially against placement of any type of non-commercial signs. We recommend you consult your agency attorney prior to taking enforcement actions. And

The *Reed* decision, however, likely rendered significant portions of every local government sign code in the country invalid. The decision is thus very important to local governments and local officials for its immediate and long term impacts.

Before the Town entertains any enforcement action on this matter I would suggest immediate attention to reviewing and revamping our sign ordinance. The sign section has not been updated since its adoption in 1995.

Respectfully, George Hainer Town of Westport Building Codes/Zoning Officer

When ZEO won't act

Town Law § 268.2:

Resident taxpayers can participate in enforcement of zoning ordinances or laws where town authorities failed or declined to act.

If town fails to abate violation within 10 days after receiving written notice by resident taxpayer, then any three town taxpayers residing in same zoning district where violation is allegedly occurring may bring action to enjoin the activity

No similar provision exists for villages or cities

Or, appeal to the ZBA

Who may appeal ZEO's decision?

"Aggrieved Parties" may be:

Recipient of enforcement action

Recipient of permit denial

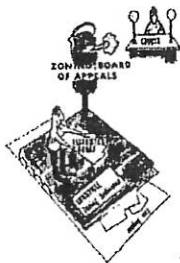
Third-party believing permit improperly issued

To be an eligible third party they must:

- suffer "special damages" or
- live close to subject property, or
- be an officer of municipality, or
- represent a department, board or bureau of the municipality

- Town Law §267-a(4)
- Village Law §7-712-a(4)
- General City Law §81-a(4)

Appealing the ZEO's Decision



ZBA acts as buffer between person aggrieved by decision of ZEO & courts

If ZBA fails to get majority vote to overturn ZEO's decision, then decision stands

Complaint of a portable traffic type sign on Stevenson Road in the AL District 31.020

Road	Tax Parcels	Complaints
Stevenson Road	65	4
Napper Road	12	0
Mt. Spring Road	24	1
TOTALS	101 Tax Parcels	5

Total COMPLAINTS 15

Others	On Route roads above	Within Zoning District AL 31.020
10	2	3

Land Use Zoning Ordinance deals in zones and how property is affected by uses.

Under 268(2)

“Upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.”

It is a free speech issue because telling this man that he has to take the sign down and leaving no other alternative for ideological expression on his property would be a violation of both the US and NY State constitution. I would be a Government authority taking away his right of expression, and I will not do that.

I would recommend suspending the enforcement of section 10 of our sign ordinance until it can be rewritten to comply with the court rulings.