

July 22, 2013

A meeting of the Town Board of the Town of Aurora took place on Monday, July 22, 2013, at 7:00 p.m. in the Town Hall Auditorium, 300 Gleed Avenue, East Aurora, New York.

Members Present:	James J. Bach	Councilman
	Susan A. Friess	Councilwoman
	James F. Collins	Councilman
	Jeffrey T. Harris	Councilman
	Jolene M. Jeffe	Supervisor
Others Present:	Ronald Bennett	Town Attorney
	Bryan Smith	Town Engineer
	Patrick Blizniak	Superintendent of Building
	William Adams	Planning Board
	Charles Snyder	Planning Board
	William Kramer	Code Enforcement
	Timothy Bailey	Planning Board
	David Gunner	Highway Superintendent
	Nancy Smith	Open Space Committee

Supervisor Jeffe opened the meeting at 7:00 p.m. with the Pledge of Allegiance to the Flag.

Councilman Harris moved to approve the minutes of the July 8, 2013 Town Board meeting; seconded by Councilwoman Friess. Upon a vote being taken: ayes – five	noes – none	Motion carried.	Action # 258 7/8/13 Town Board minutes approved.
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AUDIENCE I:

David Majka, Sweet Road, spoke about the condition of the Brooklea Drive bridge and other bridges over Tannery Brook in the Village.

UNFINISHED BUSINESS: none

NEW BUSINESS:

Supervisor Jeffe moved to adopt the following resolution; seconded by Councilman Bach:

**RESOLUTION REGARDING CONTROL AND SUPERVISION
OF BROOKLEA DRIVE BRIDGE**

WHEREAS, the Town Board of Aurora (hereinafter referred to as “Town”) and the Village Board of East Aurora (hereinafter referred to as “Village”) have failed to agree on the maintenance of Brooklea Drive bridge and the repairs required by the New York State Department of Transportation, and

WHEREAS, there have been various meetings and correspondence among members of the Town and Village, as well as their respective counsel, which have failed to resolve the question of which municipality is responsible for maintenance of the Brooklea Drive and bridge, and

WHEREAS, a review of the history of control and supervision of the Brooklea Drive bridge includes the following:

First: August 7, 1961: By Resolution the Village Board approved the application of the Aurora Land Corporation for a subdivision to be known as

Brooklea Farm Subdivision effective upon receipt of a performance bond required of the Aurora Land Corporation in connection with the installation of storm drainage and street paving.

Second: August 7, 1961: By Resolution the Village Board approved bids be submitted for the construction of water lines including along Brooklea Drive and a portion of the Brooklea Farm Subdivision.

Third: June 14, 1971: By Resolution the Village Board authorized the Village Attorney to investigate a benefit district for completing the Brooklea Drive and Brooklea bridge.

Fourth: September 8, 1971: By Resolution the Village Board authorized the Village Attorney to prepare a Bond Resolution in the amount of \$86,000 for the construction project and engineering of the Brooklea Drive improvement project which included the Tannery Brook culvert and street paving.

Fifth: November 29, 1971: By Resolution the Village Board conducted a public hearing in regard to the Brooklea Drive Access Street Improvement District, with reference to the fact that the project for the bridge had been in the Village capital budget for a long time. The Board acknowledged that a right-of-way was given to the Village free of charge when the subdivision plat was filed in the County Clerk's Office. Bids for the construction of the Brooklea bridge would be opened on December 15, 1971 with the Village Board having consideration of the proposed assessment district for Brooklea Drive.

Sixth: June 19, 1972: By Resolution the Village Board obtained the required easement for the Brooklea Drive culvert crossing Tannery Brook.

Seventh: June 19, 1972: By Resolution the Village Board approved revised bid tabulations for maintenance and materials involving the work being done on the Brooklea Drive culvert crossing Tannery Brook.

Eighth: May 4, 2009: By Resolution the Village Board authorized Matthew Hoeh, Superintendent of Public Works, to seek proposals for Brooklea bridge repairs.

, and

WHEREAS, by letter dated May 11, 2010 from the New York State Department of Transportation to Matthew Hoeh, Village Superintendent of Public Works, notified the Village of its

required repairs for Brooklea bridge over Tannery Brook. The New York DOT advised the Village that Stands 1 & 2 culvert pipes show severe surface corrosion, rust delamination, perforations and section losses requiring repairs by the Village. It was accompanied by a 9-page report regarding the bridge report, and

WHEREAS, by letter dated June 7, 2010, Matthew Hoeh, as Superintendent of Public Works, by letter advised the New York State Department of Transportation that “it has come to our attention that the Town of Aurora is responsible for the maintenance and repairs” for the Brooklea Drive bridge over Tannery Brook. Section 6-604 of the Village Law was cited. Village Law Section 6-604 provides in part that “if the board of trustees of a village has the supervision and control of a bridge herein, it shall continue to exercise such control under this chapter”, and

WHEREAS, by letter dated September 21, 2010 from the Town Supervisor to the Mayor of the Village, she disputed the contention of Matthew Hoeh regarding the responsibility of maintenance of the Town, citing Section 6-604 confirmed by the foregoing that the Village has supervision and control of the bridge, and Section 6-608 that such control could only be relinquished to the Town if the Town consented to accepting the bridge, and

WHEREAS, by letter dated October 18, 2010, from the Mayor of the Village to the Supervisor of the Town, he confirmed its opinion that the Town is responsible, citing Village Law Section 6-606 contending that the Village Board of Trustees did not adopt a resolution assuming supervision, control and maintenance in compliance with this section, and

WHEREAS, by letter dated March 18, 2011, to the Village Attorney from the Supervisor she cited resolutions by the former Village Boards starting in 1961 and 1972 in which the Village had control and supervision of the Brooklea bridge, and

WHEREAS, by undated letter from Robert Pierce, Village Attorney, to Ronald Bennett, Town Attorney, he stated that “the Mayor has stated before and has requested I state again on this behalf, his willingness to discuss this matter further in an attempt to have the Town and Village mutually attempt to resolve this issue”, and

WHEREAS, in response to the letter from the Village Attorney indicating the Village was willing to resolve the matter mutually, the Town Supervisor submitted a letter to the Mayor advising that the Town would consider equal sharing of the maintenance of the Brooklea bridge. No response to this letter was ever received, and

WHEREAS, the New York State Department of Transportation has issued a letter to the Town requiring the Town to submit a plan to complete maintenance of the bridge on or before July 31, 2013, and

WHEREAS, the Supervisor of the Town met with the Mayor of the Village to confirm its position that the Town would be willing to consider equally sharing the cost of repairs to avoid litigation over the issue of responsibility, said offer being made in response to the proposal to “mutual attempt” to resolve the issue, and

WHEREAS, the Mayor advised the Town that the Village would not agree to share any costs of the required maintenance, and

WHEREAS, the Town is willing to consider repairing the defects cited by the New York State Department of Transportation upon the report of an engineer indicating options to effect such repairs, the cost of which would be incurred by the Town without prejudice in pursuing its claim for the cost of maintenance from the Village,

NOW, THEREFORE, be it

RESOLVED, the Town does hereby determine the following:

1. Resolved, the Town finds and determines that the Brooklea bridge has been under the supervision and control of the Village in accordance with Village Law Section 6-604, thereby obligating the Village to continue to exercise such supervision and control. In addition, there has been no agreement between the Village and the Town to share the joint expense of such care, supervision and maintenance as authorized by Village Law Section 6-606.
2. Resolved, the Village has not relinquished supervision, care and control of the Brooklea bridge as provided by Village Law Section 6-608. The Village continues to have such responsibility not having entered into an agreement with the Town as provided in Sections 6-604 and 6-606, which agreement would require consent of the Town Board to assume the care, control and maintenance of the bridge.

, and be it further

RESOLVED, that although the Town determines the Village has full supervision and control of the Brooklea bridge, and has failed to enter into an agreement with the Town to share expenses, the Town will consider proceeding with an engineering report to determine options to repair the Brooklea bridge without prejudice to its claim for such costs and expenses from the Village, and be it further

RESOLVED, that a certified copy of this Resolution shall be submitted to the Village of East Aurora including the Mayor and each of the Village Trustees.

Action #259
Brooklea
Drive bridge
resolution re:
consideration
to repair.

Duly adopted this 22nd day of July, 2013 by the following vote:

Ayes – five

Noes – none

Motion carried.

Councilman Collins moved to adopt the following resolution; seconded by Councilwoman Friess:

ERIE COUNTY SNOW PLOW RESOLUTION

WHEREAS, The Town of Aurora recognizes that plowing and de-icing town, as well as county roads, is in the best interest and safety of its residents, and

WHEREAS, Erie County and the 25 towns within the county have negotiated contracts which assure that the majority of the county roads within the towns would be maintained according to the same snow and ice control methods used on all town roads, and

WHEREAS, such methods have been approved by the Erie County Department of Public Works, and

WHEREAS, in the past, all costs of manpower, equipment, and materials have been calculated to the satisfaction of all parties, and

WHEREAS, any issues that have arisen during snow and ice control in previous years have been resolved by all parties involved, and

WHEREAS, a new contract between the Towns and Erie County is currently being negotiated, and

WHEREAS, on March 20, 2013, there was a tentative agreement between the towns and Erie County which included a 3 year term with an annual increase of 5.0% as was past practice, and

WHEREAS, this agreement was considered fair and within the budgeting confines of Erie County, and

WHEREAS, on April 16, 2013, Erie County made a counter proposal to increase the contract from 3 years to 5 years and to reduce the monetary increase to 0.5%, and

WHEREAS, the county proposed rate is one the towns cannot afford, and

WHEREAS, the budgetary planning for 2014 is going to be starting in many municipalities, and

WHEREAS, the deadline for towns to order road salt de-icer is now.

NOW THEREFORE BE IT RESOLVED, that the Town of Aurora call on the Erie County Executive and the Erie County Legislature to help resolve the issue between the Erie County Department of Public Works and the 25 towns within the County of Erie with regards to snow removal and de-icing of county roads within the towns that is fair and equitable to all parties, and

BE IT FURTHER RESOLVED that the Town Clerk of the Town of Aurora is to transmit copies of this resolution to Erie County Executive Mark Poloncarz, Erie County Legislator Joseph Lorigo, Erie County Legislature Chairwoman Betty Jean Grant, and Erie County Department of Public Works Commissioner John Loffredo, and the other towns within Erie County.

Duly adopted this 22nd day of July, 2013 by the following vote:

Ayes – five

Noes – none

Motion carried.

Action #260
Resolution re:
Erie County
Legislative aid
with plow
contract
negotiations.

* * * * *

NYS Senator Patrick Gallivan and NYS Assemblyman Dennis Gabryszak have introduced bills number S.5371/A.7722, which if enacted will allow every town in Erie County that currently does not have an IDA to access the town IDA of a neighboring town. Enacting this bill into law requires all towns who wish to participate in tis legislation to complete and submit a Home Rule Request form.

Councilman Bach moved to authorize submission of a Home Rule Request (request by a local government for enactment of a special law) in reference to Senate intro bill S.5371 and Assembly intro bill A.7722.

Councilman Collins seconded the motion.

Upon a vote being taken: ayes – five

noes – none

Motion carried.

Action #261
Home Rule
request for
special IDA
law authorized

Councilwoman Friess moved to adopt the following resolution; seconded by Councilman Harris:

**RESOLUTION APPROVING PUBLIC IMPROVEMENTS
REED HILL HEIGHTS SUBDIVISION**

WHEREAS, Jewett Holmwood LLC, developer, has requested the Town Board of the Town of Aurora accept completed public improvements in the Town of Aurora upon real property in the Reed Hill Heights Subdivision; and

WHEREAS, the Town Engineer, Bryan Smith, has overseen inspection of the improvements and has recommended the approval thereof; and

WHEREAS, the Town Attorney, Ronald P. Bennett, has reported his favorable review for the acceptance of the public improvements.

NOW, THEREFORE, BE IT

RESOLVED, that the completed public improvements of water lines and storm sewers within the Reed Hill Heights Subdivision, be and are hereby approved and accepted by the Town Board of the Town of Aurora; and be it further

RESOLVED, that the Town of Aurora, under the Lease Management Agreement with the Erie County Water Authority, shall commence payment for the six (6) additional fire hydrants authorized for this subdivision with the next billing cycle.

Duly adopted this 22nd day of July, 2013 by the following vote:

Ayes – five

Noes – none

Motion carried.

Action #262
Reed Hill
Subdivision
waterline and
storm sewers
accepted;
hydrants.

* * * * *

Councilman Collins moved to adopt the following resolution; seconded by Councilman Bach:

RESOLUTION REGARDING POLO GROUNDS DEVELOPMENT

WHEREAS, the Town of Aurora approved a cluster lot development for Legacy Polo Grounds, LLC by Resolution adopted on the 9th day of April, 2007, and

WHEREAS, the Resolution included the following:

1. An approval of said application as subject to all plans and specifications submitted with the application and conditional terms adopted by the Board.
2. Failure to comply with applicable laws, codes, rules and regulations of any government or department shall subject this approval to suspension or revocation as determined by the Town Board.
3. This application may only be amended by approval of the Town Board, which approval shall be in its sole discretion.
4. That construction and development of the project shall be in strict conformity with the application, including all recommendations and documentation, and all construction of any nature shall be subject to the issuance of the appropriate permits and in compliance with all regulatory provisions of applicable law, codes and regulations.

5. The applicant, by accepting this approval, does hereby acknowledge and accept the provisions upon which the approval has been premised. The applicant further acknowledges that a violation or breach of any provisions or conditions of the subdivision may result in suspension or revocation of such approval.
, and

WHEREAS, a proceeding before Supreme Court Justice Diane Y. Devlin following a hearing held on June 28, 2007 concluded that the application approved by the Town Board on April 9, 2007 included 13 single dwelling units and 17 double dwelling units constituting 30 buildings for a total density of dwelling units of 47 units, and

WHEREAS, Legacy Polo Grounds, LLC has requested a new allocation of dwelling units with 15 single family units and 16 double family units constituting 31 buildings for a total density of 47 units, and

WHEREAS, the total agreed density of the cluster development permitted in the R-2 Zoning District is a maximum of 560,000 square feet for dwelling units based upon 16,000 square feet for single units and 20,000 square feet for double units, with the balance of the property being open without development, and

WHEREAS, a map of the Polo Grounds Condominium dated May 22, 2007 prepared by Greenman-Pederson, Inc., Consulting Engineers, setting forth the area within which dwelling units would be constructed and the balance identified as common area with no development based upon 30 buildings, said map being filed in the Erie County Clerk's Office under Map Cover 3358 dated July 3, 2007, which sets forth dwelling unit envelopes of 5.17 acres, and

WHEREAS, the approved areas included unit envelopes of 5.17 acres for 225,600 square feet and common areas of 10.908 acres for 475,152.48 feet, or a total of 16.086 acres with 700,706.16 square feet, and

WHEREAS, Legacy Polo Grounds, LLC has filed an Article 78 proceeding challenging the Town Board of the Town of Aurora in regard to its holding that the approved development is 13 single family dwelling units and 17 double family dwelling units, and

WHEREAS, Legacy Polo Grounds, LLC has proposed an Interim Order and Partial Settlement Agreement of such lawsuit which would provide for 15 single family dwelling units and 16 double family dwelling units being subject to approval of the Court, and

NOW, THEREFORE, be it

RESOLVED, the Town Board approves a proposed partial settlement permitting the combination of 15 single family dwelling units and 16 double family

dwelling units without prejudice to the position of the Town in the defense of the Article 78 proceeding, and be it further

RESOLVED, that the approval of the partial settlement and any final settlement agreement of Court determination shall not exceed the overall density of 560,000 square feet of building lots, shall not exceed 47 units, and that no units shall encroach onto designated open space as identified by the map of May 22, 2007 and filed in the Erie County Clerk's Office on July 3, 2007, included by reference, and be it further

Action #263
Polo Grounds
partial
settlement
resolution
adopted re:
of units.

RESOLVED, the Town Board does hereby authorize Jolene M. Jeffe, as Town Supervisor, to execute on behalf of the Town, a partial settlement in strict accordance with the terms and provisions of this Resolution and the proposed Partial Settlement Agreement, a copy of which is annexed hereto.

Duly adopted this 22nd day of July, 2013 by the following vote:
Ayes – five Noes – none Motion carried.

* * * * *

Councilman Harris moved to approve the purchase, off the NYS bid list – contract PT65340, of three (3) new Dell computers with monitors for the Tax office, Building Department and Assessor's office at a cost of \$2,200. Payment will be disbursed from A1680.210. Councilwoman Friess seconded the motion.

Action #264
Purchase of 3
new Dell
computers
approved.

Upon a vote being taken: ayes – five noes – none Motion carried.

Councilman Bach moved to adopt the following resolution; seconded by Councilman Collins:

RESOLUTION AUTHORIZING APPLICATION FOR GRANT

WHEREAS, the Town has an opportunity to protect 60 acres of land located along the west side of Mill Road with distinctive scenic beauty and wildlife habitat; and

WHEREAS, this property was identified as one of the priority properties for protection in the Open Space Plan unanimously adopted by the Town Board in March of 2012; and

WHEREAS, the 2003 Final Report Regional Comprehensive Plan for the Towns of Aurora, Elma, Holland and Wales and the Village of East Aurora states in its Findings and Recommendations that, "A part of the passive recreational resources in the Town includes the scenic nature of many of the areas and roads throughout the are." The first one specifically listed is Mill Road; and

WHEREAS, this property has approximately 1,612 feet of frontage along Mill Road; and

WHEREAS, this property is located along the recently established WNY Southtowns Scenic Byway and the creation of a scenic overlook at this location will add a destination of note to the Scenic Byway.

NOW, THEREFORE BE IT

RESOLVED, that Jolene Jeffe, as Supervisor of the Town of Aurora, is hereby authorized and directed to file an application for funds from the New York State Office of Parks, Recreation and Historic Preservation in accordance with the provisions of Title 9 of the

Environmental Protection Act of 1993, in an amount not to exceed \$207,520; and

BE IT FURTHER RESOLVED, that upon approval of said request, Jolene Jeffe, as Supervisor, is authorized to enter into and execute a Project Agreement with the State for such financial assistance to the Town of Aurora for the Mill Road Scenic Overlook project and, if appropriate a Conservation Easement/Preservation Covenant to the Deed of the assisted property.

Action #265
Supv. auth to file grant application for funds for Mill Road overlook site

Duly adopted this 22nd day of July, 2013, by the following vote:
Ayes – four Noes – one (Councilman Harris) Motion carried.

* * * * *

Councilwoman Friess moved to accept the following donation to be used exclusively for the Glead baseball/softball diamond project, with funds to be deposited to TA1000.112:

Action #266
Glead baseball diamond donation accepted.

<u>Donor Name</u>	<u>Amount</u>	<u>Date Received</u>
Paul & Mary Synor	\$1000.00	7/9/13

Councilman Harris seconded the motion. Upon a vote being taken:
ayes – five noes – none Motion carried.

Action #267
D. Marky to attend NYS Magistrates Conference

Councilwoman Friess moved to authorize Town Justice Douglas Marky to attend the NYS Magistrates Conference in Lake Placid, NY on September 8-11, 2013. Funds (approximately \$112.65) will be disbursed from A1110.415. Councilman Harris seconded the motion. Upon a vote being taken: ayes – five noes – none Motion carried.

Action #268
On-line auction bid results approved.

Councilman Harris moved to approve the bid results from the on-line bid through Auctions International for:

1 Foosball table \$34.00
50 Assorted chairs \$27.00

Funds will be deposited to ER2770. (Note: these items had previously been bid on but the successful bidders never came to pick them up.)

Councilman Bach seconded the motion. Upon a vote being taken:
ayes – five noes – none Motion carried.

Action #269
SEQR neg declaration issued for TwinCo site plan.

At their July 10, 2013 meeting, the Town of Aurora Planning Board voted to recommend approval of the Site Plan submitted by Twin Co, 145 Ellicott Road, PO West Falls, to erect a new 11,000 sq. ft. building at that location. CRA Engineering reviewed the drainage calculations and found them to be acceptable.

Councilman Harris moved that Twin Co. project at 145 Ellicott Road will not result in any environmental impacts and that a Negative Declaration under SEQR be issued. Councilman Bach seconded the motion.
Upon a vote being taken: ayes – five noes – none Motion carried.

Action #270
TwinCo, 145 Ellicott Rd., site plan for new bldg. approved.

Councilman Bach moved to approve the Site Plan as presented by Twin Co, 145 Ellicott Road, PO West Falls, for a new 11,000 sq. ft. building to be erected on the property in accordance with the plans submitted. Councilwoman Friess seconded the motion. Upon a vote being taken: ayes – five noes – none Motion carried.

COMMUNICATIONS – The following communications were received by the Board and filed:

- Assessor’s June 2013 report
- Dog Control June 2013 report
- Senior Center June 2013 report
- Recreation Director’s June 2013 report
- EAPD June 2013 report
- Supervisor’s June 2013 report

BUSINESS FROM BOARD MEMBERS:

Councilman Bach stated he attended 1) the Supervisors & Mayors round-table sponsored by Senator Patrick Gallivan; and 2) the Millard Fillmore Museum event.

Supervisor Jeffe attended the Millard Fillmore Museum event; received a note from Bob Lennartz which stated the Scenic Byway sign has been installed at the West Falls dam site; and announced that the Town’s 7-8 year old tournament baseball team won 1st place, the first time in the history of the Town’s baseball program.

AUDIENCE II:

Tony Rosati, Center Street, commended Twin Co on their expansion plans and suggested a sub-committee be formed to work with the Chamber of Commerce to attract businesses to the town.

Chris Lane, Linden Ave., read from a prepared statement regarding the bond market, town debt and loans.

Bill Adams, Olean Road, stated that the dedication of the cemetery plot marker for his ancestor, Joel Adams, is being held on Saturday, July 27, 2013 at 2:30 pm at the Pioneer Cemetery.

Dave Majka, Sweet Road, spoke about water bond refinancing.

Bill Patterson, Grover Road, asked what happens if the Village won’t pay the Town for having the Brooklea Bridge repaired. Mr. Patterson also noted that the phone numbers for the Councilmembers are missing from the new website and the email links are not working properly.

STAFF REPORTS:

Highway Superintendent David Gunner noted that the Geneva Road water line construction began today and a water line leak in Water District 235 was recently repaired.

The July 22, 2013 Abstract of Claims, consisting of vouchers numbered 1259 – 1385 (no. 1311 inadvertently skipped over), was presented to the Board for audit and authorization of payment from the following funds:

General	\$ 49,547.53
Part Town	159.73
Highway	19,885.83
Enterprise/Gleed	29,583.20
Capital/WD6/Geneva	5,195.00
Trust & Agency	496.80
Special Districts	<u>484,204.39</u>
Grand Total Abstract	\$589,072.48

Councilwoman Friess moved to approve the July 22, 2013 Abstract of Claims as presented and to authorize payment of same; seconded by Councilman Bach. Upon a vote being taken: ayes – five noes – none Motion carried.

Action #271
7/22/13
Abstract of
Claims apvd.

Councilman Collins moved to adjourn; seconded by Councilman Bach. Upon a vote being taken: ayes – five noes – none Motion carried.

Action #272
Meeting
adjourned.