

TOWN OF AURORA
TOWN BOARD WORK SESSION
December 27, 2022

The following members of the Aurora Town Board met on Tuesday, December 27, 2022, at 11:00 a.m. for the purpose of holding a work session. The Board met in-person at the Aurora Municipal Center, 575 Oakwood Avenue, East Aurora, New York. The meeting was streamed via Zoom and YouTube.

Present:	Charles D. Snyder	Councilman
	Luke Wochensky	Councilman
	Joseph McCann	Councilman
	James F. Granville	Councilman
	James J. Bach	Supervisor
Others Present:	Brigid Maloney	Town Attorney
	Elizabeth Cassidy	Code Enforcement Officer
	David Gunner	Highway Superintendent
	Paul Ernst	Zoning Board Chairman
	Rod Simeone	Zoning Board Member
	Donna Bodekor	Senior Center Director
	Shane Krieger	Chief of Police
	Robert Goller	Town/Village Historian
	Elizabeth Wilber	Live Stream Coordinator

Supervisor Bach opened the work session at 11:00 a.m. with the recitation of the Pledge of Allegiance to the Flag. Mr. Bach stated he would like to recognize all first responders who worked through the recent blizzard/snowstorm.

1) Local Law Intro 7-2022 – Adult Use definition amendment:

Supervisor Bach noted that the Town Board held a public hearing on this proposed local law on December 12th. Town Attorney Brigid Malone read from a prepared statement regarding the proposed amendment to the Town of Aurora Adult Use code:

The First Amendment states that “Congress shall make no law...abridging the freedom of speech.”

The Supreme Court has rejected a literal reading of this text and has held that governments may narrowly regulate sexual or erotic speech and expression if the regulation is intended to address the adverse secondary effects of such expression.

For nearly fifty years, countless studies have been conducted, and have conclusively demonstrated to the satisfaction of the courts, that the proliferation of establishments featuring sexually oriented adult entertainment such as adult video stores, topless bars and other establishments offering sexually oriented entertainment tend to produce a variety of detrimental community impacts, such as increased crime, reduction in the value of surrounding properties and impairment of community character. These detrimental effects have been held by the Supreme Court to provide a sound justification for regulating activities that might otherwise may be viewed as the exercise of free speech or expression.

That said, laws that regulate free speech must be narrowly written. Male and female impersonation, or “drag”, as it is commonly known, is viewed by many as a form of artistic expression protected by the First Amendment. All drag is not sexual or erotic in nature. The fact that something is being performed by an impersonator does not automatically render it sexual or erotic in nature. This brings us to the reason the Town Board is contemplating an amendment of the Adult Use code: the inclusion of male or female impersonators in the definition of Adult Cabaret is not aimed at regulating sexually explicit speech; it is aimed at regulating ALL speech and expression by impersonators. In other words, the definition casts a net that is far wider than the type of speech and expression that a government is permitted to regulate.

In short, I am not convinced that the Town code’s definition of Adult Cabaret, as written, could withstand a constitutional challenge as long as “male or female impersonation” is included in the definition of adult use. I have advised the Town Board accordingly.

Councilman McCann stated that this is truly about first amendment rights and moral code is not universal. The remainder of the Adult Use Code still regulates true adult activities.

Councilman Granville stated that the constitutionality of the current code is problematic, and it is a law that cannot be enforced, and he is in favor of the amendment.

Councilman Snyder stated he is good with changing the definition in the Adult Use Code. Mr. Snyder noted there is a way to regulate things with special use permits.

Councilman Wochensky stated there is a right to free speech and it is not our job to be the moral police. Performances can be regulated by the Event Code and special use permit process.

2) Request to purchase Pool Vacuum:

Quotes for a new automated pool vacuum for Community Pool were received from:

- Commercial Clearwater Company, Inc. \$8,999.00
- Frey Technologies, Inc. \$9,460.54
- SP&S Swimming Pool & Spa Equipment \$12,099.74
- B&R Pools & Swim Shop, Inc. \$9,244.00

3) Payment Request – Pool boiler:

The new boiler for Community Pool has been installed. Greater Niagara Mechanical is requesting payment in the amount of \$39,745.00 per their contract. Councilman Snyder stated that there is currently no gas service to the pool, as the Town is waiting for National Fuel to reroute the gas line. Greater Niagara will come back in Spring 2023 to fire up the boiler and make any adjustments that may be needed at that time.

4) Community Pool restroom and reconstruction project Change Orders:

Councilman Snyder stated that the Town is upgrading the pool restroom floors to a more non-slip surface. The amount of the Change Order is an increase of \$1,814.00. Another Change Order submitted by Peyton Barlow Co., Inc., is the removal of the patching and damage repair to the existing asphalt driveway at the pool. This change order is a decrease of \$2,500.00 to the contract.

5) Payment request – Peyton Barlow Co., Inc. for Community Pool project:

Peyton Barlow Co., Inc., is requesting payment no. 3 for the updates and repairs to Community Pool. William Heidt of Fontanese Folts Aubrecht Ernst Architects has reviewed the request and certifies that the contractor is entitled to payment of \$105,413.31.

6) West Falls Depot – resolution of support re: National Historic Register:

Conor Schneider, new owner of the West Falls Depot is requesting that the Town Board adopt a resolution supporting the nomination of the West Falls Depot to the National Register of Historic Places. Mr. Schneider joined the work session via Zoom.

Councilman Granville asked if the designation limited the owner as to the use of the property. Mr. Schneider responded it would, but only if he takes advantage of tax credits.

Councilman McCann noted his concern about any future liability to the Town should they adopt this resolution.

Town Attorney Maloney stated she has questions and recommends tabling this matter.

Mr. Schneider stated that there is no set timeline for the resolution, but the sooner the better.