

TOWN OF STERLING
REGULAR MEETING/PUBLIC HEARING
MARCH 23, 2009

A regular meeting of the Sterling Town Board, County of Cayuga and State of New York was held at the Sterling Town Hall, 1290 State Rt. 104A, Sterling, NY on the 23rd day of March 2009 at 7:30 pm.

PRESENT:	Ilona Palmieri	Deputy Supervisor
	Tucker Whitman	Councilperson
	Gus Taft	Councilperson
	Walter Schneider	Councilperson
	Lisa Cooper	Town Clerk
	Bill McVea	Village Mayor
	Walter Krehling	Village Trustee
	Matt Osterhautt	Village Trustee
	Judy Dunaway	Village Trustee
	Matt Gross	Thoma Consultants

ABSENT: Joan Kelley Supervisor

ATTENDED BY: 3 People

Privilege of the Floor

Matt Gross of Thoma Consultants gave the board an update of the CDBG Grant. He told the Board that there are 2 applicants that need immediate renovations.

RESOLUTION #2009-041

APPROVAL OF GRANT MONEY

On motion made by Councilperson Taft, seconded by Councilperson Whitman, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
Nays 0

RESOLVED, that this Board approve the grant money for David Kyle for \$3,000 for emergency furnace replacement only. Another application will be submitted for the remaining work at a later date.

RESOLUTION #2009-042

APPROVAL OF GRANT MONEY

On motion made by Councilperson Whitman, seconded by Councilperson Taft, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
Nays 0

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RESOLVED, that this Board approve the grant money for Peter Pickard for \$25,000 for siding, insulation, windows, doors, well drilling, flooring, gutters, smoke detectors and co detectors.

Bill McVea, Village of Fair Haven Mayor, explained his concern of the well head that is in the Town of Sterling that supplies the water for village residents. Deputy Supervisor Palmieri stated that the Planning Board had concerns with the potential development that was across the street. She stated that the Planning Board hired an engineer but the applicant across the street never pursued the development application. She also stated that the Town Board wants to protect the water supply to the village.

RESOLUTION #2009-043

OPEN PUBLIC HEARING ON A LOCAL LAW FOR ADULT USE AND ENTERTAINMENT ESTABLISHMENTS MORATORIUM LAW

On motion made by Councilperson Whitman, seconded by Councilperson Schneider, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, that this Board open the public hearing on a local law for Adult Use and Entertainment Establishments Moratorium Law. Time: 7:50 pm.

Highway Report

Highway Superintendent Kelley was absent from the meeting but did have some requests that he forwarded in a letter to the Town Board. He had a high school senior that would like to do an internship at the Highway Department. In the letter, he stated that this student would be insured by the school. He also asked to advertise for some surplus items.

Historical Society Report

Rob Flack stated that they are finishing the lavatory in the Red School House.

West Barrier Bar Report

Deputy Supervisor Palmieri stated that the West Barrier Bar Committee has given the Town and Village a list of priorities for the Bar area. Signs for the Steward, large stones and a second port-a-john were on the list of priorities. There was discussion between the Board members of the Bar area.

Accept Minutes

On motion made by Councilperson Whitman, seconded by Councilperson Taft, to accept the minutes from the February 23, 2009 regular meeting. Carried.

Supervisors Report

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On motion made by Councilperson Taft, seconded by Councilperson Whitman, to accept the supervisors report for February 2009. Carried.

Correspondence

1. Time Warner Cable re: ownership of Time Warner
2. Assessment Ratio for 2009
3. 2008 triennial aid certification
4. Pickard and Anderson re: annual monitoring variance
5. (Note from Hallie Sweeting, Historian) Letter from Robert Weible, NYS Historian, congratulating on her good work
6. NYS DEC re: NYS Freshwater Wetlands Act
7. Environmental Finance Center re: workshops
8. Positive Declaration for the Planning Board
9. Letter to Mr. Sugar acknowledging his letter regarding his mail box

New Business

1. AUD completed and filed
2. Audit books-Councilpersons Taft and Schneider would meet with the department heads to find out a good time to audit their books.

RESOLUTION #2009-044

PAY THE AUDITED VOUCHERS

On motion made by Councilperson Whitman, seconded by Councilperson Schneider, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, authorizing the supervisor to pay the following audited vouchers:

General A	voucher #97-136	\$14,602.31
General B	voucher #14-19	\$657.36
Highway A	voucher #44-66	\$5,823.31
Special	voucher #7	\$288.76
Trust & Agency	voucher #3	\$5,461.17

RESOLUTION #2009-045

APPOINTMENT TO THE BAR

On motion made by Councilperson Taft, seconded by Councilperson Whitman, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

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RESOLVED, that this Board appoint Sewall Oretling to the Board of Assessment Review.

RESOLUTION #2009-046

VOID VOUCHER

On motion made by Councilperson Taft, seconded by Councilperson Schneider, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, authorizing the Supervisor to void voucher #89 to the Cayuga County Treasurer-error in amount (voucher was corrected in March vouchers).

RESOLUTION #2009-047

INTERNSHIP

On motion made by Councilperson Schneider, seconded by Councilperson Taft, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, that this Board approve an internship for a high school Oswego County BOCES student at the Highway Garage under the Highway Superintendent's supervision in May.

RESOLUTION #2009-048

TRANSFER FUNDS

On motion made by Councilperson Schneider, seconded by Councilperson Whitman, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, authorizing the Supervisor to transfer \$2,449.00 from A1110.2C Justice Equipment Grant to A1110.4 Justice Contractual.

RESOLUTION #2009-049

WILLIAMSON LAW BOOK PROGRAM FOR CODE ENFORCEMENT OFFICE

On motion made by Councilperson Taft, seconded by Councilperson Whitman, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

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RESOLVED, authorizing the Supervisor to sign the Williamson Law Book program contract for the Code Enforcement Office.

RESOLUTION #2009-050
CLOSE PUBLIC HEARING

On motion made by Councilperson Taft, seconded by Councilperson Schneider, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, that this Board close the public hearing on Local Law #1 for Adult Use and Entertainment Establishments Moratorium Law.

RESOLUTION #2009-051
LOCAL LAW #1 ADULT USE AND ENTERTAINMENT ESTABLISHMENTS MORATORIUM LAW

On motion made by Councilperson Taft, seconded by Councilperson Whitman the following resolution was

ADOPTED	DEPUTY SUPERVISOR PALMIERI	AYE
	COUNCILPERSON WHITMAN	AYE
	COUNCILPERSON TAFT	AYE
	COUNCILPERSON SCHNEIDER	AYE

RESOLVED, that this Board pass the following as Local Law #1 for 2009 the Adult Use and Entertainment Establishments Moratorium Law:

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS

SECTION 1. TITLE

This Local Law shall be known as the "Adult Use and Entertainment Establishments Moratorium Law" of the Town of Sterling.

SECTION 2. LEGISLATIVE PURPOSE AND INTENT

It is the intent and purpose of this law to pass a "stop-gap" zoning measure placing a moratorium on the creation, opening, commencement or operation of Adult Use and Entertainment Establishments, as hereinafter defined, within the Town of Sterling. During such period, application or approvals of applications under the Town Zoning Law for Site Plan approval, zoning variances and/or conditional use permits shall not be accepted or made for any Adult Use and Entertainment Establishments as hereinafter defined. Currently there are no such Adult Use and Entertainment Establishments in existence in the Town of Sterling.

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The moratorium will:

1. Preserve the character and quality of life within the Town of Sterling neighborhoods and business areas;
2. Control such documented harmful and adverse secondary effects of adult uses on surrounding areas as:
 - a. decreased property values;
 - b. attraction of transients;
 - c. parking and traffic problems;
 - d. increased crime;
 - e. loss of business for surrounding non-adult businesses; and
 - f. deterioration of neighborhoods;
3. Prevent crime;
4. Protect retail trade;
5. Maintain property values;
6. Restrict minors' access to such uses;
7. Preserve and maintain the general health, safety, welfare and morals of the community.

SECTION 3

This moratorium shall remain in effect for a period of one year from the date of enactment.

SECTION 4 DEFINITIONS

As used in this law, the following terms shall have the meanings indicated:

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS means a public or private establishment, or any part thereof, which presents any of the following entertainment's, exhibitions or services: topless and/or bottomless dancers; strippers, topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-string or both; adult arcade; adult bookstore or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters; escort agencies; nude model studios and sexual encounter centers. Adult Use and Entertainment Establishments customarily exclude minors by reason or age.

1. **ADULT ARCADE**-Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or

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describing of specified sexual activities or specified anatomical areas.

2. **ADULT BOOKSTORE OR ADULT VIDEO STORE:**
 - a. A commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental, for any form of consideration any one (1) or more of the following:
 - (1) Books, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes or video reproductions which depict or describe "specific sexual activities" or "specified anatomical areas".
 - (2) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities".
 - b. A commercial establishment may have other principal business purposes that do not involve the offerings for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store" so long as one (1) of its principal business purpose is the offering for sale or rental for consideration, any of the specified materials which depict or describe "specific sexual activities" or specified anatomical areas". For purpose of this definition, "principal business purpose" shall mean twenty-five percent (25%) or more of any of the following:
 1. the number of different titles or kinds of such merchandise;
 2. the number of copies or pieces of such merchandise;
 3. the amount of floor space devoted to the sale and/or display of such merchandise; or
 4. the amount of advertising which is devoted to such merchandise either printed or broadcast media.
3. **ADULT CABARET-A** nightclub, bar, restaurant or similar commercial establishment which regularly features:
 - a. Persons who appear in a state of nudity or semi-nudity.
 - b. Live performances, which are characterized by the exposure of "specific anatomical areas" or by "specified sexual activities".
 - c. Films, motion pictures, video cassettes, slides or other photographic reproductions, which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
4. **ADULT MOTEL-A** hotel, motel or similar commercial establishment which:
 - a. Offers accommodations to the public for any form of consideration, which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic

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reproduction which are categorized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproduction.

- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours.
5. **ADULT MOTION PICTURE THEATER**-A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown.
6. **ADULT THEATER**-A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity.
7. **ADULT USE ESTABLISHMENT**-A public or private establishment or any part thereof which presents any of the following entertainment or services on one (1) or more occasions: Adult arcades, adult bookstores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, adult video stores, escort agencies, massage parlor, nude model studios and sexual encounter centers, including encounters generated by means of computers and fiber optics.
8. **ADULT VIDEO STORE**-See "Adult Bookstore".
9. **EROTIC BEHAVIOR**-The display of any lewd, wanton, immodest, obscene or filthy gesture.
10. **ESCORT**-A person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
11. **ESCORT AGENCY**-A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one (1) of its primary business purposes for a fee; tip or other consideration.
12. **ESTABLISHMENT**-Any of the following:
 - a. The opening or commencement of any sexual oriented business as a new business.
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any other sexually oriented business.
 - c. The additions of any sexually oriented business to any other existing sexually oriented business.
 - d. The relocation of any sexually oriented business.
13. **FIBER OPTIC EMISSIONS**-Adult software, imaging systems, photographic transmissions, video or graphic clip art images

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- produced or created on a web site or transmitted on the Internet.
14. **INDECENT EXPOSURE**-When a person appears in such a manner that the private or intimate parts of that person's body are unclothed or exposed.
 15. **MASSAGE PARLOR**-An establishment where, for any form of consideration, massage, alcohol rub fomentation, electric or magnetic treatment or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.
 16. **NUDE MODEL STUDIO**-Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.
 17. **NUDITY**-Less than completely and opaquely covered human genitals; pubic region; buttocks; female or male breast below a point immediately above the top of the areola; human male genitals in a discernibly turgid state, even if completely and opaquely covered.
 18. **PERSON**-An individual, proprietorship, partnership, corporation, association or other legal entity.
 19. **SEMI-NUDE**-A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
 20. **SEXUAL ENCOUNTER CENTER**-A business or commercial enterprise that, as one (1) of its primary business purposes, offers, for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between persons of the same and/or opposite sex.
 - b. Activities between male and female persons and/or persons of the same sex, when one (1) or more of the persons is in a state of nudity or semi-nude.
 21. **SEXUALLY ORIENTED BUSINESS**-An adult arcade, adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult use establishment, adult video store, escort agency, massage parlor, nude model studio or sexual encounter

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center, including encounters generated by means of computers and fiber optics.

22. SEXUAL SOLICITATION:

- a. To seek to obtain compensation, in favor or remuneration, for the display of indecent exposure and/or erotic behavior.
- b. To encourage, induce and/or coerce the display of indecent exposure and/or erotic behavior by including by not limited to, written and/or visual, verbal, physical and and/or psychological means.
- c. To congregate for the sole purpose of cajoling, inciting and/or sustaining an act of sexual solicitation.

23. SPECIFIED ANATOMICAL AREAS-Any of the following:

- a. Human genitals, pubic region unless completely and opaquely covered.
- b. Buttocks unless completely and opaquely covered.
- c. Female or male breast below a point immediately above the top of the areola unless completely and opaquely covered.
- d. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

24. SPECIFIED SEXUAL ACTIVITIES-Any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast.
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- c. Masturbation, actual or simulated.
- d. Excretory functions as part of or in connection with any of the activities set forth in Subsections A, B and C above.

SECTION 5 ADULT USE ESTABLISHMENTS PROHIBITED

1. Adult Use Establishments and Sexually Oriented Business, as defined in this chapter, shall be prohibited within the boundaries of the Town of Sterling.

SECTION 6 PENALTIES FOR OFFENSES

1. Any person found to be in violation of any provisions of this Local Law shall be served with a written notice stating the nature of the violation and providing for the immediate correction thereof.
2. Except as otherwise provided, any person who commits or permits any act in violation of any of the provisions of this chapter or fails to comply with the provisions thereof shall be deemed to have committed an offense against such chapter and shall be liable for any such violation or the penalty therefore.
3. For every violation of any provision of this chapter, the person violating the same shall be subject to a fine of not more than Five Hundred (\$500.00) Dollars for each such offense. Such penalties shall be collectable by and in the name of the Town for each day that such violation shall continue.

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4. In addition to the above provided penalties and punishment, the Town Board may also maintain an action or proceeding in the name of the Town in a Court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this Local Law.

SECTION 7 SEVERABILITY

It is hereby declared to be the intent of the Sterling Town Board that:

- a. If a court of competent jurisdiction finds any provisions of this law invalid, in whole or in a part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.
- b. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract or land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

SECTION 8 WHEN EFFECTIVE

This Local Law shall take effect upon its adoption and filing with the Secretary of State in accordance with provisions of Section 27 of the Municipal Home Rule Law.

RESOLUTION #2009-052

SELL SURPLUS ITEMS

On motion made by Councilperson Schneider, seconded by Councilperson Taft, the following resolution was

ADOPTED Ayes 4 Palmieri, Whitman, Taft, Schneider
 Nays 0

RESOLVED, authorizing the Highway Superintendent to advertise for the sale of surplus items from the Highway Department.

Privilege of the Floor

Leigh Shortslef asked about the status of the State budget that states Town Clerk and Highway Superintendent positions be appointed. The Town Clerk stated that she had not heard anything as of yet and would give him the contact information of the Assembly and Senators.

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Rob Flack asked about the status of the building addition. Deputy Supervisor Palmieri stated that it would be a year or two before it could be done.

There being no further business, on motion made by Councilperson Taft, seconded by Councilperson Whitman, the meeting adjourned. Time 8:34 pm.

Respectfully submitted,

Lisa Cooper, RMC/CMC
Sterling Town Clerk