

March 20, 2023

A Public Hearing and The Regular Town Board Meeting for the Town of Wheatfield was held March 20, 2023 at 6:45 pm at Wheatfield Town Hall, 2800 Church Road, North Tonawanda, County of Niagara and State of New York to audit bills and to conduct any other business coming before the Town Board.

PRESENT: Supervisor Don MacSwan, Councilman Larry Helwig, Councilman Gilbert Doucet Councilman Randy Retzlaff, Councilman Doktor, Town Attorney Matthew Brooks and Town Clerk Kathleen Harrington-McDonell

6:50 pm The Public Hearing on the proposed Local Law 1-2023 to amend Chapter 69-Building Construction & Fire Prevention opened. Town Attorney Matthew Brooks gave an overview of the proposed amendment. No action was taken.

Moved by Councilman Helwig and seconded by Councilman Doktor to close the Public Hearing at 6:55 pm. **This motion was CARRIED: AYES 5 – NAYS 0.**

The Regular Town Board meeting opened at 7:07 pm.

Moved by Councilman Doucet and seconded by Councilman Retzlaff to accept the minutes dated March 6, 2023 as presented. **This motion was CARRIED: AYES 5 – NAYS 0.**

Moved by Councilman Helwig and seconded by Councilman Doktor to approve the March 20, 2023 bill payment for voucher #20230326 – 20230411 in the amount of \$394,556.63

General Fund	\$218,105.08
Highway	\$ 20,194.77
Water/Sewer	\$ 47,845.54
Fire	\$ 1,292.80
Refuse	\$103,426.86
Pre-paid	\$ 3,691.58

This motion was CARRIED: AYES 5 - NAYS 0.

Moved by Supervisor MacSwan and seconded by Councilman Helwig to authorize Mike Klock, Building Inspector, to accept the bid of \$4,200 for the sale of the 2012 Ford Escape on auctions International. **This motion was CARRIED: AYES 5 – NAYS 0.**

Bldg. - 2012
Escape sold

Moved by Supervisor MacSwan and seconded by Councilman Helwig to advertise for Request for Bids to construct a storage facility at Town Hall. Sealed Bids to be submitted to the Town Clerk’s Office by 3:00 pm April 17, 2023 and will be opened at the Town Board meeting April 17, 2023 at 7:00 pm. **This motion was CARRIED: AYES 5 - NAYS 0.**

Request bids
Town Hall
storage

Moved by Councilman Doktor and seconded by Councilman Retzlaff to install an ADA compliant automatic door opening system at the main entrance of Town Hall. **This motion was CARRIED: AYES 5 - NAYS 0.**

Install ADA
compliant door
Town Hall

Moved by Councilman Doktor and seconded by Councilman Retzlaff ;

Resolution of the Wheatfield Town Board to amend the Code of the Town of Wheatfield, approving the adoption of Local Law 1-2023, amending the Town’s amending sections of Chapter of the Town Code entitled AMENDMENTS TO CHAPTER 69 - BUILDING CONSTRUCTION AND FIRE PREVENTION as follows:

TOWN OF WHEATFIELD
LOCAL LAW #1-2023

Local Law 1-2023

AMENDMENTS TO CHAPTER 69 BUILDING CONSTRUCTION AND FIRE PREVENTION

Replace §69-15

The Town Board intends to exercise its authority under § 10(1)(i) and (ii)(a)(6), (a)(11) and (a)(12); § 10(1)(ii)(d)(3); and § 10(4)(b) of the Municipal Home Rule Law, § 268(1) of the Town Law and any other applicable provision of law now or hereinafter enacted, to supersede and/or expand upon the applicable provisions of § 268(1) of the Town Law, and any other applicable or successor law pertaining to the enforcement of local laws and ordinances in order to impose a penalty and fine structure that best reflects the needs of the community.

A.

Any person or business entity who commits or permits any acts in violation of a provision of this chapter or other applicable provision of the state code shall be deemed to have committed an offense and shall upon conviction thereof, be subject to a fine or penalty of not less than \$250 and

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not more than \$5,000 for a conviction of a first offense; upon the conviction of a second offense, where the offense occurred within two years of the commission of the first offense, a fine or penalty of not less than \$1,000 and not more than \$10,000; and a conviction of a third or subsequent offense, where the offense occurred within five years of the commission of the first offense, shall be deemed a misdemeanor punishable by a fine or penalty of not less than \$1,500 and not more than \$15,000 or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day or part thereof such violation continues or is permitted to exist shall constitute a separate offense punishable in like manner. Written notice of a violation is not a prerequisite for the imposition of such fine, penalty and/or punishment unless the subject of the prosecution is the noncompliance with such notice.

B.

Violation of §§ 69-4(A), 69-4(G), 69-7(B), or 69-7(D). Notwithstanding the provisions of § 69-15(A), any person or business entity who is the owner or is in charge of property where a violation of §§ 69-4(A), 69-4(G), 69-7(B), or 69-7(D) has been committed or exists, or who commits an offense against the provisions of §§ 69-4(A), 69-4(G), 69-7(B), or 69-7(D), or has control of the property and permits such offense to exist shall upon conviction be guilty of an offense, punishable by a fine or penalty of not less than \$250 nor more than \$5,000, or by imprisonment not exceeding 15 days, or by both such fine and imprisonment upon a conviction of a first offense; upon a conviction of a second offense, within a period of five years of the first conviction, a fine of not less than \$1,000 nor more than \$10,000, or by imprisonment not exceeding 15 days, or by both such fine and imprisonment; and upon conviction of a third or subsequent offense, within a period of five years of the first and second conviction, a fine of not less than \$1,500 nor more than \$15,000 or by imprisonment not exceeding 30 days, or by both such fine and imprisonment. Each day, or part thereof such violation continues, following notification by the Town or service of a summons, shall constitute a separate offense, punishable in like manner.

C.

Violation of § 69-6(F). Notwithstanding the provisions of § 69-15(A), any person or business entity who is the owner or is in charge of property where a violation of § 69-6(F) has been committed or exists, or who commits an offense against the provisions of § 69-6(F), or has control of the property and permits such offense to exist shall be guilty of a misdemeanor, punishable by a fine or penalty of not less than \$500 nor more than \$5,000, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment upon a conviction of a first offense; upon a conviction of a second offense, within a period of five years of the first conviction, a fine of not less than \$1,000 nor more than \$10,000, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment; and upon conviction of a third or subsequent offense, within a period of five years of the first and second conviction, a fine of not less than \$3,000 nor more than \$15,000 or by imprisonment not exceeding 180 days, or by both such fine and imprisonment. Each day, or part thereof such violation continues, following notification by the Town or service of a summons, shall constitute a separate offense, punishable in like manner.

D.

The occurrence of personal injury. Notwithstanding any other provision of § ~~69-15~~ to the contrary, any person or business entity who owns or is in possession and/or control of a building or structure and knowingly permits or allows the building or structure to be occupied or utilized for any purpose without a valid building permit, certificate of permitted use, certificate of occupancy or other necessary town approval having been issued shall be guilty of a misdemeanor in the event an occupant or any person suffers bodily injury or death in connection with such use and/or occupancy and, upon conviction thereof, shall be liable for a fine or penalty of not less than \$2,000 and not more than \$10,000 or by imprisonment not exceeding 90 days, or by both such fine and imprisonment, and each day or part thereof such violation continues or is permitted to exist shall constitute a separate offense punishable in like manner. Written notice of a violation is not a prerequisite for the imposition of such fine, penalty and/or punishment.

E.

In addition to the criminal penalties set forth herein or in other applicable law, rule or regulation, the Town Attorney is authorized to pursue civil and equitable relief, including but not limited to

compensatory actions; civil penalties of not more than \$200 per day, or any part thereof; an action to compel compliance with or to restrain by injunction the violation of this chapter; and other remedies which in the opinion of the Town Attorney may seem necessary and proper. Such civil and equitable relief may be sought in a court of competent jurisdiction or from a duly appointed hearing officer whenever permitted by law. Any civil monetary penalty awarded may be added to the tax bill of the property where the violation has occurred and shall be collected in the same manner.

F.

Compliance orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. The compliance order shall: (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by certified/registered mail. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

G.

Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

H.

Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § ~~69-6~~, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § ~~69-6~~, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of § 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of § 382 of the Executive Law.

I.

No oversight or dereliction of duty on the part of the Town shall serve to legalize the maintenance, erection, construction, alteration, modification, razing, or removal of a building or structure, or the use and/or occupancy of any property, building or structure which does not conform to the provisions of this chapter or other applicable local, state and/or federal law, rule, ordinance or regulation.

J.

Civil penalties. In addition to those penalties proscribed by state law, any person who violates any provision of the Uniform Code, the Energy Code or this chapter, or any term or condition of any building permit, certificate of occupancy/certificates of compliance, temporary certificate, stop-

work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town of Wheatfield.

K.

Injunctive relief. An action or proceeding may be instituted in the name of this Town of Wheatfield, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this chapter, or any term or condition of any building permit, certificate of occupancy/certificate of compliance, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of this Town of Wheatfield, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board of this Town of Wheatfield.

Add to § 69-6

F.

It shall be unlawful for any person to remove, alter, obscure, deface, change or otherwise tamper with any portion of a stop-work order that has been posted by the Town. The property owner and/or permit holder shall be strictly liable for a violation of this section. In addition to any other penalty provided for herein, the permit may be revoked by the Code Enforcement Officer.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Helwig and seconded by Councilman Doktor to approve Firearms Discharge permits and/or renewals for the individuals as shown on the attached list.

This motion was CARRIED: AYES 5 - NAYS 0.

Firearms permits

Moved by Councilman Doucet and seconded by Councilman Helwig to approve and authorize the Town Supervisor, Highway Superintendent and Councilmen to sign the 2023 Highway Law §284 Agreement for the expenditure of highway monies within the Town of Wheatfield as presented at the March 20, 2023, Town Board Meeting. Said agreement is subject to alteration and can be increased or decreased.

This motion was CARRIED: AYES 5 - NAYS 0.

Hwy. - 284 agreement

Moved by Councilman Retzlaff and seconded by Councilman Doucet that in accordance with SEQR requirements, the Town Board has completed Parts 1,2, and 3 of the Shor EAF and have determined that the proposed Code amendments to Chapter 69-Building Construction and Fire Prevention will not have a significant adverse impact on the environment and therefore issue a Negative Declaration. The Town Board authorize the Supervisor to sign the EAF which will act as the Negative Declaration.

This motion was CARRIED: AYES 5 - NAYS 0.

SEQR Code amendments

Moved by Councilman Retzlaff and seconded by Councilman Doktor to authorize Wendel to bid the Wheatfield Town Hall Parking Lot Improvements project when plans are ready. Estimate of project is \$560,000 and includes all areas of the back parking lot and steps. Start date will be after July, 1, 2023.

This motion was CARRIED: AYES 5 – NAYS 0.

Bid Town Hall Parking Lot Improvements

Moved by Supervisor MacSwan and seconded by Councilman Retzlaff to approve two additional knox box for Bergholz Fire Co. at a cost of \$1,200-\$1,400 per box in addition to the five they currently have.

This motion was CARRIED: AYES 5 – NAYS 0.

Knox box Bergholz Fire Co.

Summer Camp – Wheatfield residents' preference

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Moved by Councilman Retzlaff and seconded by Councilman Helwig to mandate Town of Wheatfield residents receive preference for Summer Camp by allowing Wheatfield residents only to register for the first 48 hours.

This motion was CARRIED: AYES 5 - NAYS 0.

PUBLIC INPUT – Fire Advisory Board supports updates to town code, additional comments made that the updates have more "teeth" and will effective for the court to enforce codes

The next meeting is scheduled for April 3, 2023 at 7:00 pm.

Moved by Supervisor MacSwan and seconded by Councilman Helwig to adjourn at 8:11 pm.

This motion was CARRIED: AYES 5 – NAYS 0.

Respectfully submitted,

Kathleen Harrington-McDonell
Town Clerk