

January 30, 2015

A Special Meeting of the Town Board of the Town of Warwick was held at the Town Hall, 132 Kings Highway, Town of Warwick, for the purpose of discussion of proposed, pending or current litigation. Supervisor Sweeton called the Special Meeting to order at 9:00 a.m. with the Pledge of Allegiance.

**ATTENDANCE:** Supervisor Michael Sweeton  
Councilman Floyd DeAngelo  
Councilman Russell Kowal  
Councilman James Gerstner  
Councilman Mickey Shuback

Attorney for the Town, Jay Myrow

**EXECUTIVE SESSION:** Motion Councilman DeAngelo, seconded Councilman Shuback to enter into an executive session for the purpose of discussing the proposed, pending or current litigation. Motion Carried (5 ayes, 0 nays) 9:02 p.m.

**RECONVENE:** Motion Councilman DeAngelo, seconded Councilman Gerstner to reconvene the meeting. Motion Carried (5 ayes, 0 nays) 9:21 p.m.

Attorney Myrow – I will outline briefly where we are. The issue that had to be considered in an executive session involves the potential review of the decision of the Pine Island Fire District that was set forth in writing, where they adopted a resolution declaring themselves immune from the towns zoning laws with respect to the proposed building of a cell tower facility on the fire district property. That determination was adopted by resolution on September 30, 2014. That determination is reviewable in court to determine the propriety of that determination and there is a statute of limitations in which to file such proceedings an Article 78 proceeding to determine the propriety of that determination. That statute at the earliest would expire today and it may go an extra few days, but for my purposes it expires today. The purpose of a court proceeding is seeking review to determine strictly whether or not the fire district as a municipal entity is immune from the zoning laws. It essentially has very little to do, if anything to do, with the underlining issue as to whether a cell tower should be built or should not be built on the fire district property. It is really limited as to whether or not the fire district properly engaged in a balancing test to determine immunity. My review of the determination and I advised the Board accordingly that I believe there is reasonable grounds for making the challenge under the law. A resolution would be required to authorize the filing of the Article 78 proceeding to that affect.

**#R2015-68 AUTHORIZATION FOR ATTORNEY FOR THE TOWN TO  
COMMENCE AND PROSECUTE LITIGATION TO REVIEW THE  
DETERMINATION OF THE PINE ISLAND FIRE DISTRICT –  
WIRELESS COMMUNICATIONS TOWER**

**Motion Supervisor Sweeton, seconded Councilman Gerstner to adopt a resolution authorizing Attorney for the Town, Bluestein, Shapiro, Rich & Barone, LLP, to commence and prosecute litigation to review the determination of the Pine Island Fire District that the development of its property by construction of a wireless communications tower is immune from the zoning law of the Town.**

**Roll Call Vote:**

<b>Supervisor Sweeton</b>	<b>Aye</b>	<b>Councilman Gerstner</b>	<b>Aye</b>
<b>Councilman Kowal</b>	<b>Aye</b>	<b>Councilman Shuback</b>	<b>Aye</b>
<b>Councilman DeAngelo</b>	<b>Aye</b>		

**Motion Carried (5 ayes, 0 nays) Supervisor declared this resolution duly adopted.**

**Discussion: Supervisor Sweeton asked the Board members if they understand what the issue is. That it is not whether a cell tower is good there or not.**

**Councilman Gerstner – It’s whether they followed the procedures of the town.**

**Supervisor Sweeton – Correct, that we have zoning laws that are in place that were created by a consensus of the community and that it is a question of whether any entity is immune to those zoning laws.**

**Councilman DeAngelo – As a Town Board we are obligated to uphold those laws.**

**Supervisor Sweeton – Correct. At the request of the DEC who is considering the challenge to lead agency status they requested that all the parties meet to find a solution. We did meet yesterday and those negotiations continue and will continue so the fact that this is being done is to preserve the towns rights under the statute of limitations, it doesn’t preclude us from still trying to work out and find a solution with the fire district. As long as we all agree and we stated it multiple times before the public. We all agree that we need improved cell service in Pine Island. We all agree with the fire district that if we could get enhanced fire communications in Pine Island we would want to do that and we also agree that if it’s at all possible we would like the fire district and its taxpayers to receive some revenue from the cell tower. Those are issues we agree with the fire district on and we will continue to work in a future meeting with them and AT&T to find that solution.**

**ADJOURN: Motion Councilman DeAngelo, seconded Councilman Gerstner that the Special meeting be adjourned. Motion Carried (5 ayes, 0 nays) 9:27 a.m.  
01-30-15 CP.**

---

**Marjorie Quackenbush, Town Clerk**