

**TOWN OF DEERPARK
JOINT MEETING OF TOD BOARD/CITY OF PORT JERVIS COMMON COUNCIL
RE: ANNEXATION
MONDAY, MAY 21, 2018**

Meeting was held at Town of Deerpark Senior Center, 410 Route 209, Huguenot, New York 12746

Invocation led by Arthur Trovei (Participation Optional)

Supervisor: Gary Spears

Councilmen: Alan Schock, Ken Smith, David Dean, Arthur Trovei

Attorney: Glen Plotsky

Engineer: Al Fusco, Jr.

There was a *Moment of Silence* in remembrance of the Santa Fe, Texas High School victims of violence.

Pledge of Allegiance led by David Dean

Call to Order at 7:02 p.m.

In attendance from the City of Port Jervis:

Mayor: Kelly Decker

Council Members: Stan Siegel, Kristin Trovei, Gina Fitzpatrick, Lisa Randazzo, Regis Foster, Dominick Santini, Maria Mann

City Clerk: Robin Waizenegger

Absent: George Belcher, David Bavoso

Attorney: William Bavoso

Police Chief: Bill Worden

DPW: Jack Farr

Town of Deerpark Attorney Glen Plotsky read the Public Hearing Notice (attached to the official minutes) – Joint Public Hearing Common Council of the City of Port Jervis and the Town Board of the Town of Deerpark concerning the proposed annexation.

City of Port Jervis Mayor Decker presented the Annexation Feasibility Study through power point (copy of which is attached to the official minutes).

Public comment:

Ann Keller – 52 S. Maple Ave. She said that for those who don't know her, she and her husband live across the street from the property in question. She said the presentation this evening has raised more questions than she had when she came. There are several things that haven't been addressed. One is runoff-ground water. If you're going to retain even 10% of that hill, you're going to have runoff. All the properties directly across the street have shallow water wells. Some of them only average 20-30 feet for their drinking water and everything, which is something that really needs to be addressed. If you pave any part of that hill, there's going to be runoff. It will come down the hill or into the ground and pick up on the water table. There's also the question of the impact of traffic. South Maple Avenue for those who are not familiar with it, is two lanes (one lane north and one lane south). There's no turning lane and there are no shoulders. The shoulders are basically runoff ditches that can fill up with water in a rainy season. She said her main question is how do these things get addressed beforehand. After the fact is not acceptable to the people across the street as far as septic tanks and water wells. When they put their septic system in and had their well drilled, there were definite guidelines as to what they could and could not do because of the impact on existing shallow wells and that their properties back up to the Neversink River. Not having the opportunity of seeing this presentation or anything in writing before the meeting, she feels it raises more questions than beforehand. There is a spring fed pond at the top of the hill that has resident snapping turtles that are a protected species that she confirmed a year ago with the Department of Environmental Protection in Albany. They aren't sure how many turtles are in there, but there is more than one and each season there are little ones. They come down the hill to the river, then they walk back. It's a cycle of nature. While maybe this might be an improvement to the neighborhood to have service commercial on the top of the hill ... she doesn't see it. She also said there is a liability of restaurants serving alcohol and one of the articles she saw, there's also a proposal she believes for a liquor store in the preliminaries. She thought that before any sensible person would vote for annexation, questions like this have to be answered, because the ramifications could be a lot worse than doing the development at all.

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Ed DeGroat – Said he wondered – are they going to put restaurants and hotels down in Tri-states. They have somebody investing a lot of money in Port Jervis, putting restaurants and hotels downtown. One of the buildings is 29-31 Front Street, which the City of Port Jervis put a lot of money in and that's going to be a restaurant/hotel. All the restaurants/hotels that people poured all their money in, in downtown Port Jervis. That's all I ask. Thank you.

Linda Van Horn – She said she was a resident of Port Jervis and owns property in Deerpark. All of this interests her. What she would like to say is about ethics. She did a FOIL and the only disclosure was a copy of this agreement. Bavoso, Bavoso and Plotsky acknowledged that they are all from the same Law Firm. What about the other conflicts she feels are unethical? River Country is owned by the same people who own Equity Homes. Equity Homes is listed as the Developer of the property between Routes 15 and 16 in Tri-States that they want to annex. Equity Homes is represented by Plotsky and Bavoso and people in town also know that Bill Bavoso is an investor in Equity Homes and he could stand to make money from this annexation. He gave a loan to Equity Homes and he gets payments for his interest. The conflict-and this is a conflict-needs to be removed before they go forward with any annexation. Also, in conflict is that Equity Homes as developer is represented by David Bavoso. How can he be involved in the annexations that involve Equity Homes and benefits not only investors like Bill Bavoso, his father, and legal counsel for Port Jervis and also his law firm. Also, it is known that the Mayor of Port Jervis, Kelly Decker, the councilman at large David Bavoso met with two members of the town board to discuss annexation in Milford, Pennsylvania with Bill Bavoso and Mr. Plotsky also legal counsel for Deerpark. She wanted to know who paid for that dinner—was it paid for by the law firm for the town or was it paid for by the law firm for the city or was it paid for by the law firm representing Equity Homes and its investors? And at the end of the day, she said, we all have to remain true to ourselves and maintain our integrity.

Joan McBride - She said she was a Port Jervis taxpayer. She has been a taxpayer there for the past 45 years. This has her a little concerned because during her time living in Port Jervis, she had seen development going in that has tax breaks, and she's afraid this might be one of them. They also say that if there is any environmental hazards the developer would have to pay for it. She remembers an oil company by the Middle School that Port Jervis had to pay for. As a taxpayer, this scares her. She's afraid they will have businesses in Port Jervis but they won't have the tax base that they need because the taxpayers aren't going to be able to afford it anymore. Thank you.

Bill Onofry – He is an attorney in town but also has property interest in the City of Port Jervis and the Town of Deerpark. His first question is, is this a hearing to initiate annexation of territory? He asked if this was intended to be a hearing to initiate annexation under the general municipal law, meaning you intend to annex based off of this hearing today. Supervisor Spears deferred to Glen Plotsky who stated the purpose of this hearing was more to establish things that have to be done and looked at as part of this study. Mr. Onofry said, okay, so you're not acting on any petitions. Mr. Plotsky said there are some petitions that are currently in hand, there are others in draft or are waiting to be submitted, but to answer his question, again this is more in a fashion of a scoping session to determine and set forth what was covered in the study that is requiring for both the city and the town before we move forward on any consideration of annexation. Mr. Onofry said okay, so the current petitions that you have in your possession, you are not acting upon? Mr. Plotsky said not tonight. Mr. Onofry went on to say he had a copy of Consolidation, Dissolution and Annexation of Towns and Villages – a how to guide. He asked if anyone on the board had seen this. He asked if they knew they could google New York Annexation and could find that. The Department of State thought it was important to actually outline how annexations are supposed to happen. He thought one of the biggest issues of the city and the town is that it hasn't understood what needs to be done. If things are going to move forward and if petitions are going to be moved upon, they actually have to follow a certain criterion. For instance, any petitions that are in your possession are null and void if not acted upon within 20 days, which result in notice of petition. Then, after notice of petition is publicized you have to hold a meeting between 20 and 40 days of the notice being published. So, don't think of acting on any of the petitions that are in your possession now. They're moot. It's done. Until a petition is actually handed in, a lot of it is speculative. He doesn't know why they are talking about the District, because he believes the District's made it clear that at this point in time, they have no intention of moving forward with annexation. As you move forward with the annexation, you not only have to have the notice, but you actually have to move forward and prove that petitions are sufficient. The petitions have to be submitted by a party that has land that is continuous or actually adjoins the City of Port Jervis. Several of those parcels don't even touch the City of Port Jervis. The Deerport LLC parcel does not touch the City of Port Jervis. Until the adjoining lands owned by River Country are next to the City of Port Jervis, Deerport cannot be considered. You can't play hop scotch. You can't say we're going to annex New Jersey, an entire state ... why? Because we're going to get this parcel, and we're going to get this parcel, and the state touches that one, so we'll take it all. He claimed to not make it up, and there's actually case law there from 1970

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that says, they define what adjoin mean. Because when the statute was written it didn't define it, so they took the common Meriam Webster definition. It has to touch it. So, why are we talking about parcels that don't even touch the City of Port Jervis and that includes four out of the six parcels that are owned by PJ Quarry, and the parcel owned by the City of Port Jervis. Basically, the idea is you have to draw within the lines. If we're going to expand the lines, that's fine and if you have to do it in multiple steps that's fine too. Or, if the city wants the PJ Quarry to come in, he said I'll spill the beans and say they can consolidate the lots and add one lot, because then all of PJ Quarry's lands are one tax parcel and then they can be adjoined. But, I would expect the Developer doesn't want that because once you consolidate the lots, you'd have to ask permission in order to subdivide the lands and sell them off piece by piece if that's any consideration. He continued saying, if you're going to move forward, you have to actually prove that the annexation benefits the municipality. In his opinion, the city can't afford to spend any money on these studies. The studies should be born by the petition. They should actually have concrete data. It should just be speculation. He understands and thinks the presentation was fair based on the information, but neither the mayor or councilmen, nor the town board members should be the ones to foot this bill. Show what it means, what will it result in, how much money will they make and save ... the potential revenue is at \$23.5 million dollars that are set out in the presentation. One thing they don't talk about is that under the Real Property Tax Law, there's an exemption that developers can apply for under Section 485-b that allows any party that invests in commercial property to see an exemption. He knows this exists because the Brewery is a small parcel in Port Jervis. Their assessment doubled but they are only paying 25% more in tax. So, don't count on \$23.5 million dollars. As long as the City of Port Jervis hasn't zeroed out 485-b, the city is not going to get that money. The city will get a portion of that money. And if they paid an agreement with Deerpark that doesn't account for that, then guess what? They have a problem. The City of Port Jervis will owe money to the Town of Deerpark. In terms of concerns of the neighbors on South Maple, the annexation must show (and this is coming from case law) the requisite unity of purpose in facility is to constitute a community. What does that mean? It's got to fit in. So, there's definite concerns if right now the River Country parcel that is in the City of Port Jervis, because there's two: one on the Port Jervis side and one on Deerpark's side. The one in Port Jervis is residential zoned. It fits in the community because it is residential use. But if you're saying that the residential use has to go away, well first of all, he'd love to see a developer give up any rights for free. He said if you say it cannot be, then they would have to sign something and say it never will be and by themselves, their successors and their signs. That means never. It's in writing, good luck. He didn't know of anyone that's business savvy, that's going to do that if not for a cost. And, he asked-guess what the cost is. Well, we'll give you this but you have to reduce our taxes. Looking at assessed value, you're also assuming these people will never challenge the assessments imposed. You cannot do that. You cannot assume that a savvy businessperson will not challenge an assessment, that is their right. That's why we have May Day...that's why tax assessor's hate May because they're occupied by challenges. We see development in the City of Port Jervis and you see development in the Town of Deerpark and people are putting money in but they're also challenged with their taxes. Even if the assessments go in, if they want to and choose to challenge the tax assessment, they have the right to do so. So, it may be you get your first bum at what ever the number is, but if they win the challenge, then the reduction could occur. Which means the city could have to pay back or the town would have to pay back money. That means that any agreement between the municipalities has to protect both sides if there is an agreement. When it comes to the actual determination as to whether or not this is going to benefit the city, he thought the mayor has hit on certain points. They look at, and the case law supports: fire protection, health regulations, sewer and water service, public utilities, public education, and those are things that need to be established. If this is going to benefit the City of Port Jervis and also, not be a detriment to the Town of Deerpark, there has to be some type of proof that these parcels cannot be developed without annexation because the law does not allow for one property owner to mistake the laws and rules of one municipality in order to benefit from the other. He has no doubt that the benefit is water and sewer. That's it. You annex the parcels ... these people think they've hit gold. Maybe that's the case. If anybody needs a local reference point there is an actual 2015 case discussing the ins and outs in factual background but also procedural background tied to Kiryas Joel. That was an annexation that everybody saw in the newspaper. But there is case law. He said that anything that he has in his records, he is happy to share. His goal is not to prevent. He said, I am tired of things being done wrong—last time I got scolded for putting it on Facebook—I am here—I am in person. There are issues. There are absolute issues for what they want to do. He said, I offered it up before...if anyone wants to talk to me, they may have to do it on the baseball field this time of year. I am at baseball five out of seven nights a week, maybe more. But, I want to see the communities do better. He hopes he's done his father proud by not getting upset tonight, because his father warned him. There is a way to do this. It just needs to be done in a way where everything is on the table. If there are issues, they have to be addressed. If these parcels don't touch the municipality, you need to make sure that you've figured out how you're going to overcome that or that it's going to be in steps because anything that is done, intentionally or unintentionally, that opens up the door to potential challenge or lawsuit is only going to further delay it. My concern he said is for the City of Port Jervis right now, more so than the Town of Deerpark—obviously, he was born and raised there, his heart is there too—but the city cannot afford to make a bad decision. Thank you.

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George Keller – His wife mentioned the snapping turtles and he said yes, there is a migration that is going on right now. They come up out of the Neversink, go across their property and the neighbor’s property and head up to a lake, which is up on the hill. Is that lake going to still be there? They need a home. Another thing that the mayor mentioned, they’re going to be pumping the gray water ... he asked where the storm drains and an answer from the audience said it drained in the river.

Christa Hoovler – Her concern as a Deerpark resident is what is in it for us? She said, we’ve heard a lovely presentation. However, she agrees about the concerns about an IDA and about tax refunds and recalls, so what does that get the Town of Deerpark? It seems to be benefitting perhaps Port Jervis, again she thinks has anyone considered the fact that in 2011, this board and members of this board spoke with Cracker Barrel, who had zero interest in coming to a property that she believes is being looked at now for annexation because this area could not support that. So, what establishments are we realistically, not hypothetically going to be getting to come here she asked. In 2011, Cracker Barrel said no. If we’re going to do this and it is only going to benefit the Town of Deerpark, we have to have actual people interested in coming. We need to hear from them and find out exactly what is going on. Otherwise it is pie in the sky and there’s no benefit as she sees it to the Deerpark residents at this point.

Motion to Keep Public Hearing Open for 30 Days for Written Comment

Motion by David Dean, 2nd by Ken Smith to keep the Public Hearing Open for 30 Days for Written Comment.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Motion to Keep Public Hearing Open for 30 Days for Written Comment

Motion by Kristin Trovei, 2nd by Stan Siegel to keep the Public Hearing Open for 30 Days for Written Comment.

Discussion: Kelly Decker offered to have the presentation as well as the full document online (Port Jervis City Website).

VOTE: 7 AYES: Stan Siegel, Kristin Trovei, Gina Fitzpatrick, Lisa Randazzo, Regis Foster, Dominick Santini, Maria Mann

2 ABSENT: David Bavoso, George Belcher

MOTION CARRIED

Motion to Close Common Council Meeting (Port Jervis)

Motion by Stan Siegel, 2nd by Regis Foster to close the Common Council Meeting (Port Jervis).

VOTE: 7 AYES: Stan Siegel, Kristin Trovei, Gina Fitzpatrick, Lisa Randazzo, Regis Foster, Dominick Santini, Maria Mann

2 ABSENT: David Bavoso, George Belcher

MOTION CARRIED

Motion for 20-Minute Recess (Town of Deerpark) Before TOD Board Meeting

Motion by Gary Spears, 2nd by David Dean for a 20-minute recess before Town of Deerpark Board meeting.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

**TOWN OF DEERPARK
TOWN BOARD REGULAR MEETING
MONDAY, MAY 21, 2018**

The Town of Deerpark Board re-entered their meeting at 8:35 p.m. and continued with the agenda.

Addition or Deletions to Agenda - None

Presentations/Communications – None

Public Comment – None

Department Head Report – None

Motion to Approve May 7, 2018 Town Board Minutes

Motion by Gary Spears, 2nd by Ken Smith to approve the May 7, 2018 Town Board Minutes as written.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

New Business

Motion to Approve Oakland Valley Campground License

Motion by David Dean, 2nd by Alan Shock to approve Oakland Valley Campground License per recommendation of the Building Inspector.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Appropriations, Budget and Payment of Bills

Motion to Pay Bills

Motion by Ken Smith, 2nd by Alan Schock to pay bills that have been signed by three council members and accept and the Budget Officer's Report and all may be viewed in the Town Clerk's Office.

General Fund Abstract #9 of 2018 in the amount of \$82,150.72

Highway Fund Abstract #9 of 2018 in the amount of \$28,151.49

Deerpark Manor Street Lighting Fund Abstract #5 of 2018 in the amount of \$442.15

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Closing Board Comments

Councilman Dean – None

Councilman Smith – It was an interesting evening. It's always interesting to have a public hearing and he thought the comments were solvable and they are moving in the right direction.

Councilman Trovei – He thought there was great information and thought this could be a very positive thing for both the city and town and there are a lot of things to work out, but he sees a lot of merit. If they are doing some things mechanically wrong, they can adjust them.

Councilman Schock – He also thought it was very positive and wanted to assure people that have issues to see how all this will work out. If they went to Planning Board meetings they would see how a lot of these questions are answered.

Councilman Trovei added that they didn't even mention how the potential of this could create another 100 or 200 jobs, what an impact—and that hasn't been mentioned.

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Supervisor Spears was happy with the public comments and thought it was good for those to have an opportunity to express their opinions and many were good. There were some issues that are Planning Board decisions and they wouldn't change if they are in the City of Port Jervis or the Town of Deerpark. He commended everyone who came out to speak. He hoped that people would use the 30-day written comment period.

Motion to Enter Executive Session to Discuss the Pilot and a Tax Certiorari

Motion by David Dean, 2nd by Alan Schock to enter Executive Session to discuss the pilot and a tax certiorari after a five-minute recess.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Motion to Re-Enter Regular Session at 9:30 p.m.

Motion by David Dean, 2nd by Arthur Trovei to re-enter Regular Session at 9:30 p.m.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Motion to Adjourn at 9:30 p.m.

Motion by Alan Schock, 2nd by Ken Smith to adjourn at 9:30 p.m.

VOTE: 5 AYES: Alan Schock, Ken Smith, David Dean, Arthur Trovei, Gary Spears

MOTION CARRIED

Respectfully submitted by,

Florence T. Santini
Town Clerk