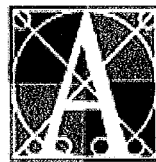


In the Matter of:
IN RE PROPOSED LOCAL LAW NO. 2 of 2016
v.

TOWN OF SHELBY PUBLIC HEARING

September 07, 2016



ALLIANCE
COURT REPORTING, INC.

Video Conferencing and Videography Center

120 East Avenue, Suite 200 • Rochester, NY 14604

585.546.4920 ■ www.alliancecourtreporting.net ■ 800.724.0836



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF THE PUBLIC HEARING

TOWN OF SHELBY PROPOSED LOCAL LAW NO. 2 of 2016,

Entitled "A Local Law Amending the Zoning Local
Law of Shelby, Orleans County, New York, Creating
the Wildlife Refuge Protection Overlay District"

Public Hearing in the Above-Titled Matter:

Location: Town of Shelby
4062 Salt Works Road
Medina, New York 14103

Date: September 7, 2016

Time: 7:00 p.m.

Reported By: TAMMY B. FIGLER

Alliance Court Reporting, Inc.

120 East Avenue, Suite 200

Rochester, New York 14604

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

Appearing on Behalf of the Frontier Stone:

Joseph D. Picciotti, Esq.

Harris Beach PLLC

99 Garnsey Road

Pittsford, New York 14534

jp Picciotti@harrisbeach.com

Appearing on Behalf of The Town of Shelby:

Daniel A. Spitzer, Esq.

Hodgson Russ, LLP

The Guaranty Building

140 Pearl Street, Suite 100

Buffalo, New York 14202-4040

dspitzer@hodgsonruss.com

Town Board Members:

Merle L. Draper, Town Supervisor

Bethany A. Centrone,

Dale Stalker, Deputy Supervisor

Kenneth Schall

Steve Seitz, Jr.

William Bacon

Darlene Rich, Town Clerk

1 TOWN OF SHELBY PUBLIC HEARING

2 WEDNESDAY, SEPTEMBER 7, 2016;

3 (Proceedings in the above-titled matter
4 commencing at 7:03 p.m.)

5 * * *

6 MR. DRAPER: Good evening everyone. If I
7 could have your attention, please. We'll open the
8 hearing.

9 Good evening everyone, and welcome to the
10 Shelby Town Hall. The purpose of today's gathering is
11 a hearing for Local Law No. 2. I'm sure you all know
12 that. I want to welcome you here.

13 We'll stand to the Pledge of the Flag.
14 We'll go over the rules of tonight's hearing and
15 anybody who wants to speak will be able to.

16 At this time stand for the pledge.

17 (The Pledge of Allegiance.)

18 MR. DRAPER: Again, the purpose of
19 tonight's hearing is Local Law No. 2 regarding a
20 wildlife refuge protection overlay zone.

21 I want to go over for everybody who
22 doesn't know, the purpose of a hearing is to get a
23 public testimony. A municipal board, such as this
24 Town Board, uses that information, along with any
25 other information gathered, to make their decisions.

1 TOWN OF SHELBY PUBLIC HEARING

2 This hearing is not a question and answer
3 period. If questions arise during the hearing, I'll
4 track them as best we can. We may answer them at the
5 end of the hearing; we may issue a statement at a
6 later date. Anyone wishing to speak may have that
7 opportunity. We ask you to keep your comments to
8 three minutes. If that's not enough time, at the
9 end -- we want to give everybody a chance to speak
10 that wants to. If you have stuff of substance that
11 you weren't able to get within your three minutes,
12 we'll open that up at the end of the public comment
13 period.

14 If you have not done so already, please
15 silence your cell phones.

16 Please keep in mind that a hearing can be
17 an emotionally charged meeting -- a town gathering.
18 Because of that, I would ask you to make all comments
19 directly to the Town Board, not to each other. If you
20 do that, we'll probably have one warning and then ask
21 you to take the discussion to Tim Horton's.

22 But, seriously, we don't want emotionally
23 charged comments towards each other, whether you're
24 happy or angry about what's going on. All the
25 comments should come to the Town Board.

1 TOWN OF SHELBY PUBLIC HEARING

2 I'd also ask you, whether you like what
3 somebody is saying or not, please respect the right to
4 be heard. I'm going to say again, please address all
5 comments to the Town Board. I don't mean to belabor
6 that, but no matter what hearing we are at, that seems
7 to be an issue.

8 At this time I would ask Mr. Spitzer to
9 provide a greater overview of the proposed law.

10 MR. SPITZER: Good evening. Nice to see
11 you all again.

12 Tonight the Board is considering the
13 Overlay District Law. Let me start with a little bit
14 of an explanation of what overlay districts are.

15 Overlay districts are zoning that sits on
16 top of, or in replacement of typical zoning when a
17 town or other community wishes to take special rules
18 in effect for a particular area within a zone. The
19 Town of Shelby has other types of overlay zones.

20 There are two basic types of overlay
21 zones. One is a floating-type zone. A floating-type
22 zone is: I want to do a project, it needs a special
23 zoning, you come in and ask for that zoning and the
24 zoning is placed on those properties.

25 If you are familiar with what's going on

1 TOWN OF SHELBY PUBLIC HEARING

2 in the Town of Yates right now, that community has a
3 rule that requires wet farms to be in overlay zones
4 just for those properties that are in the zone.

5 This type of overlay zone is a specific
6 area. If everybody hasn't seen the map, the map is
7 available in the clerk's office and available on the
8 website. It's basically the refuge in an area about
9 3,000 feet north of the refuge. This would,
10 therefore, affect any properties within that map. If
11 a property is partially within the map and partially
12 not, it only affects the part of the property that's
13 in the overlay zone.

14 What this overlay zone proposes to do is
15 to say, notwithstanding what the regular zoning is
16 underneath this, there's an additional set of
17 restrictions in order to protect the wildlife refuge.

18 The Town Board has tentatively
19 identified -- let me emphasize the word "tentatively."
20 Nothing has been passed; nothing has been approved;
21 nothing is in stone; nothing's being voted on tonight.

22 And also the public comment period, the
23 public hearing may close tonight, but the public
24 comment period does not. The Board accepts comments
25 up to October 1st. So if you have other written

1 TOWN OF SHELBY PUBLIC HEARING

2 comments, somebody suggests something or you see a
3 change is going to happen in the law, feel free to
4 submit those comments to the Board members directly to
5 the clerk and they will be in the record.

6 And I want to emphasis something else that
7 the Supervisor said. It's great to know what your
8 position is on something. It's a lot more helpful for
9 the Board members to know why. So to say "I oppose"
10 is fine, but to say "I oppose because," or "I like the
11 law except for number X." Something like that.
12 That's the kind of direction I think the Board really
13 would -- is looking for in terms of advising them on
14 how to proceed with this law or not to proceed with
15 this law.

16 Let me also emphasize that this is a local
17 law about an area. It is not about any specific
18 project. It does not also affect something -- we had
19 a number questions about it -- I want to emphasize
20 this. If you have lived in this or have property in
21 this proposed zone and you're already conducting an
22 activity, nothing in this law in anyway affects that
23 activity. Everything that is currently going on --
24 even so, for example, if you currently have a junkyard
25 that's licensed and it's operating in that district,

1 TOWN OF SHELBY PUBLIC HEARING

2 the law that would say going forward there can't be
3 junk yards, would only apply to new junk yards. So
4 nothing in this law affects any existing use that's in
5 this proposed district. So that often comes up as a
6 question so people understand how new zoning affects
7 things that you are already doing.

8 Also, this law sits with all other laws.
9 So if you have something that you are doing that's on
10 this list and you're in an agricultural district and
11 you're running a farm and that is, whatever it is
12 you're doing, is what the Agricultural Department
13 considers to be a standard agricultural practice, this
14 law doesn't prohibit you from doing that. We made
15 that clear in terms of a couple of points. There was
16 also other questions that came up in comments to the
17 supervisor, but feel free to -- we can confirm those
18 points afterwards. But this is not intended to
19 overrule other laws.

20 In that regard, let me also note for the
21 record that we received a protest petition. The way
22 protest petitions work, generally you get together
23 with an assessor to see whether there's adequate
24 numbers of people who have signed it. The general
25 rule is if 20 percent of the people in an area sign

1 TOWN OF SHELBY PUBLIC HEARING

2 it, then it requires a supermajority vote, or four out
3 of five votes to pass the law if they protest it.

4 However, there's also a number of courts
5 that said, if your property is in there and you sign
6 it, then that's a 100 percent protest. And while the
7 law isn't clear on that, that's most communities I
8 work in take that approach, that your protest applies
9 to your property. So the protest petition has been
10 received so we'll note that for the record.

11 We don't have any specific order in terms
12 of people and how they're going to speak, so I'll turn
13 it back over to Skip, and just ask people to be polite
14 to each other as we move forward tonight.

15 At this time we'll open the public comment
16 section. Just raise your hand if you would like to
17 make a statement. Mr. Mahar?

18 MR. SPITZER: The only other thing I
19 forgot to say is to give your name and address so that
20 the stenographer can record it.

21 MR. MAHAR: Dave Mahar, President of
22 Frontier Stone.

23 We have a longstanding pending application
24 with the Town of Shelby to build a stone quarry here
25 on property owned by the Zelazny family on Fletcher

1 TOWN OF SHELBY PUBLIC HEARING

2 Chapel Road. It's important to me, the Zelazny family
3 and many landowners in the community, that we state
4 why we oppose Local Law No. 2 of 2016.

5 Local Law No. 2 would create an Overlay
6 District outlawing the quarry that we have been in the
7 process of permitting for nearly ten years. And as it
8 is written, Local Law No. 2 would also ban a lot of
9 other businesses that people in Shelby may want to
10 start.

11 As some of you know, I grew up nearby in
12 Gasport. I'm a life-long resident of western New
13 York. I've raised my family here, ran businesses
14 here, and like many of you I was honored to serve in
15 the United States Army.

16 Following my discharge, I worked for the
17 Cornell University Cooperative Extension in Erie and
18 Niagara Counties, ran a large dairy farm for six years
19 before I began working in the mining industry.

20 After general managing two stone quarries,
21 co-workers and I purchased quarries in Lockport and
22 Royalton, which we ran successfully for 14 years.

23 The DEC recently determined that the
24 quarry would have no negative impact on the Iroquois
25 National Wildlife Refuge, and a judge ruled on July

1 TOWN OF SHELBY PUBLIC HEARING

2 27th that a permit should be issued for the project.

3 A few days later the Town proposed to enact new Local
4 Law No. 2 to outlaw the quarry in order to protect the
5 refuge.

6 In his July 27th ruling the administrative
7 law judge said for each and every grievance that the
8 Town raised on the record, they offered no expert
9 witnesses, no viable data, no additional study to
10 support the claims that prohibiting the quarry would
11 be necessary to protect the wildlife refuge.

12 What some of you here tonight may not know
13 is that we have already communicated with the refuge
14 and outlined a plan to help them with their wetland
15 management efforts. From the INWR's comprehensive
16 conversation plan we know that the refuge needs water
17 and adjust water levels in order to provide a feeding,
18 nesting, brood rearing and resting habitats for
19 migratory birds and resident wildlife. Quarry
20 operations discharge a lot of water.

21 Last year in November of 2015, we
22 collaborated to designate a drainage basin in the
23 quarry as an alternative mine dewatering route for the
24 United States Fish and Wildlife Service. The draft by
25 the DEC states: That the USFWS can request Frontier

1 TOWN OF SHELBY PUBLIC HEARING

2 Stone to discharge water from that basin for use by
3 the refuge any time they request it, for as long as
4 they need it and as long as the quarry is operational.

5 Without the water that the Frontier Stone
6 has agreed to provide on a consistent basis, certain
7 refuge marshes may cease to exist causing reduction in
8 critical habitats for migratory waterfowl. Climate
9 studies forecast longer lasting heat waves which will
10 continue over the next century which will compromise
11 the wetland management efforts at INWR. This quarry
12 operation can and will make all the difference in
13 helping INWR a thriving habitat for waterfowl and area
14 wildlife.

15 For those who have expressed concern about
16 the location of this quarry in relation to the STAMP
17 project, we've already worked things out with them
18 too. A permanent seismograph monitoring station will
19 be installed in the northwest corner of STAMP, and the
20 blast design for this operation was reconfigured to
21 meet STAMPS --

22 MR. DRAPER: Mr. Mahar? How close are you
23 to the end of your statement?

24 MR. MAHAR: A page and a half.

25 MR. DRAPER: Go ahead.

1 TOWN OF SHELBY PUBLIC HEARING

2 MR. MAHAR: There's a lot of science that
3 goes into these operations and we take it all very
4 seriously. Each of the studies and supplemental data
5 was reviewed, analyzed by credentialed experts in the
6 field of ecology, hydrology and geology.

7 Frontier Stone did everything required of
8 us and beyond to examine and re-examine the potential
9 impact this project would have on the refuge. The
10 environment, local roads, water resources, impact from
11 blasting, dust and additional traffic. This operation
12 was designated to benefit the community and the
13 refuge, not harm them.

14 I lied to you, I got two more pages.

15 MR. DRAPER: We should pick up at the end.
16 I'll let you finish at the end. You can submit it to
17 the stenographer, and we'll put it in the minutes.

18 Anyone else?

19 WENDY PENCILLE: 11207 Ryan Road, Medina,
20 New York.

21 Wendy Pencille. I'm a resident of the
22 Town of Shelby and I'm president for Citizens for
23 Shelby Preservation. Our organization has been
24 working to oppose this quarry for the last ten-plus
25 years, and we appreciate that the Town Board has

1 TOWN OF SHELBY PUBLIC HEARING

2 listened at every public hearing, and has designed
3 Local Law No. 2 in accordance with the all of the
4 issues that have been raised at those hearings.

5 I have a petition for 38 people who could
6 not be here who also support Local Law No. 2 and I
7 will give that to you.

8 The SEQR process has proven to not be
9 worth the paper it's written on. It could not protect
10 the most sensitive habitat in the State of New York.
11 The facts are the DEC judge didn't even recognize
12 their own department's study on the Short Eared Owl
13 and Northern Harriers, threatened and endangered
14 species. They ignored them completely. They ignored
15 us because they thought their expert was better and
16 more qualified than we were, and we had many experts,
17 including the DEC's own staff.

18 So the process is completely ineffective
19 at protecting sensitive habitats. And we are, our
20 group and myself, are very glad that the Town has
21 decided to do the work that the DEC has not done.
22 Thank you.

23 SAM GOWAN: I'm Sam Gowan with Alpha
24 Geoscience in Clifton Park, New York, 679 Plank Road.

25 I was hired by Frontier Stone in 2008 to

1 TOWN OF SHELBY PUBLIC HEARING

2 look specifically at the groundwater and surface water
3 issues. That's my particular expertise related to
4 mining.

5 We started work on the project and what we
6 found is looking at the refuge that the groundwater
7 drawdown related to the quarry was going to have no
8 impact on the surface water in the refuge. What we
9 did find is that there's two basins draining through
10 the project site that go into two marshes on the
11 refuge. And we found that we were going to increase
12 the water in the schoolhouse marsh and reduce slightly
13 the water in center marsh.

14 We met with Tom Roster (phonetic) and the
15 staff at the refuge, and we worked out a plan to
16 address that. Part of that plan was to use our
17 initial Phase I quarry, which is about 11.6 acres, as
18 a storage basin so we could control the discharge.
19 And we also agreed to vary the discharge point to
20 those two basins as needed because the refuge has a
21 charge of maintaining the water level and changing the
22 water level for their various projects and programs
23 that they have going on.

24 I took the time to read the comprehensive
25 plan that the refuge put out for their management, and

1 TOWN OF SHELBY PUBLIC HEARING

2 they have two goals in there that I'd like to read
3 into the record.

4 Goal 1: Is to provide high quality fresh
5 water well and migration stopover and breeding habitat
6 for water fowl, marsh birds, shore birds and Bald
7 Eagles and refuge empowerments through water level
8 control.

9 Goal No. 6: Enhance partnerships with
10 local communities and various organizations to garner
11 support and promote refuge programs and resources.

12 The use of this quarry to help them
13 control, help them with their water management has
14 been a very important relationship and help that the
15 quarry can provide to the refuge.

16 Also, they identify in their management
17 plan, climate change is going to be one of the biggest
18 issues that the refuge is going to have to deal with.
19 And I've read several reports that we can provide and
20 give to you that talk about western New York and how
21 if climate change progresses as projected, there's
22 going to be a 20 percent increase over the next
23 century in precipitation, but it's going to be highly
24 variable and extreme. It's also going to be an
25 increase in temperatures that are going to affect

1 TOWN OF SHELBY PUBLIC HEARING

2 evaporation rates. So it's going to be increasingly
3 difficult to manage the water in the refuge.

4 The quarry, working in partnership with
5 the refuge, can help provide enough water to help
6 support their programs. It would be a very effective
7 way to do this. Sometimes not discharge and just hold
8 back flood water; other times pump as needed to help
9 get control of the water levels.

10 That's all I've got at this time. Thank
11 you.

12 MR. SPITZER: Supervisor, with your
13 permission, let me note for the record everything that
14 was in the DEC record is in the Town record, so we
15 don't need to repeat stuff in the DEC record. That's
16 part of the Town record, although that's a different
17 proceeding. The Town is aware of all the stuff
18 because the Town was a party to the proceeding. So
19 everything that's in that record is in the Town record
20 on this proposed law.

21 ALANA KEPPLER: My name is Alana Keppler.
22 I'm speaking on behalf of SK Herefords, and I just
23 want to say that all of our health and cattle records
24 and performance records are on a web-based browser
25 that I use most of the time out in pasture, and to

1 TOWN OF SHELBY PUBLIC HEARING

2 prohibit any telecommunications business in the area
3 would adversely impact our business and business and
4 farm in a multitude of ways.

5 MR. SPITZER: Do you currently have
6 coverage in your field?

7 ALANA KEPPLER: Yep.

8 MR. SPITZER: So you're talking about...

9 ALANA KEPPLER: Just communication
10 long-term, because technology changes every day, so to
11 prohibit any needs in the future.

12 BRIAN McCARTY: 11066 Dunlap Road, West
13 Shelby. I stand with the Town and all the people
14 opposed to the quarry in any entity, any business that
15 would adversely affect the refuge. Buffer zone is an
16 excellent idea. As everybody knows could use
17 tweaking, a little redefining of areas.

18 But the point is this card was sent out.
19 The old military tactic called divide and conquer.
20 It's putting the town people against the town people
21 with a lot of propaganda which isn't properly
22 supported.

23 My hope and my belief is once the people
24 get learned about the real issues here, that it will
25 unify them, they'll have a greater voice in opposition

1 TOWN OF SHELBY PUBLIC HEARING

2 specifically to the quarry.

3 I know from first-hand; my father lives on
4 Murphy Road. He's one road parallel to Hinman Road.
5 All you folks got to do is drive down Hinman Road and
6 see what they, Frontier Stone, aka, Lafarge, has done
7 to that community. The people can't sell their
8 houses. It has not improved the quality of their
9 homes, of the area, the tax base. Talk to the people
10 who are experiencing the results, the effects of a
11 quarry in a peaceful, quiet, agricultural area.

12 Remember this: Almost ten years ago their
13 attorneys said they would get the DEC's permit, quite
14 assured of that, and if the Town opposed them, they
15 would tie them up in litigation, basically attempting
16 to bankrupt the Town or get their people on the Town
17 Board so they would get what they wanted.

18 It is nothing about anything for the
19 refuge. The refuge is not allowed to speak because
20 the people who are out there would say they had to
21 come to a middle ground inevitably if they win.
22 Someone within the DEC is not representing the DEC who
23 is supposed to support the environment of all the
24 towns, New York State, the federal government.

25 What we're looking at here, folks, is a

1 TOWN OF SHELBY PUBLIC HEARING

2 precedent. What they achieve here, they will use as a
3 model to go on every nature preserve, every wildlife
4 refuge, and they'll say, "Look what we did here. We
5 can do this for you."

6 Do not believe the propaganda. I honestly
7 believe when the people know what's really going on,
8 it's going to turn around on them and we're going to
9 have a unified voice against. No division for that.
10 I thank you very much.

11 MR. DRAPER: Mr. Beamor, you're next but
12 before you speak I want to remind everyone, all
13 comments should be directed to the Town Board. I
14 don't know how many times I've said that, but if you
15 are addressing the audience and not the Town Board,
16 we're going to stop the comment and move on to the
17 next comment. The comments are to the Town Board.
18 It's a Town Board hearing.

19 HANK BEAMOR: 10181 West Shelby Road.

20 My wife and I have been residents of
21 Shelby for 31 years, and we're here to voice strong
22 support for the Board's action and we think it's
23 definitely merited.

24 Our refuges, national parks and monuments
25 have proven to be incredible regional assets

1 TOWN OF SHELBY PUBLIC HEARING

2 contributing the economy as well as the quality of
3 life.

4 Similar arguments to ones in the postcard
5 mailing have been brought forward at the creation of
6 each of these treasures, including the formation of
7 Iroquois in the beginning and yet again now. And each
8 time they have always proven to be false. Iroquois is
9 a tremendous asset to Shelby and must be protected
10 from incompatible use. Again, we express our
11 gratitude to the Board for bringing forward this law.

12 JAMES STRICKLAND: I live at 11348 Dunlap
13 Road. Our property borders the preserve on the west
14 side of Route 63, and I'm strongly in favor of this
15 proposition for the protection of wildlife and also
16 our quality of life where we live. Thank you.

17 GAIL MILLER: I live at 10780C Telegraph
18 Road, Medina, but it's in the Town of Shelby.

19 I support the new local law. The Overlay
20 District, since the state DEC has failed in its
21 responsibility to protect wildlife and the Iroquois
22 National Wildlife Refuge, Shelby has stepped forward
23 to protect the refuge and the quality of life for its
24 residents. I applaud them for taking this step.

25 Frontier Stone is a business which is out

1 TOWN OF SHELBY PUBLIC HEARING

2 to make money. They don't care about the surrounding
3 area, people or animals. If the company did, it would
4 have chosen a site which was not close to the wildlife
5 refuge, further away from private property and
6 considered its effects on the technology part.

7 As far as the law limiting property
8 rights, all zoning laws limit some use of property,
9 and governments can make variances or tweak the law a
10 little bit as needed. But if we wish to protect our
11 refuge and the quality of life for folks in this area,
12 then the New Wildlife Refuge Protection Overlay
13 District should be supported. Thank you.

14 PHIL KEPPLER: I work at SK Herefords with
15 my daughter and wife. And my biggest concern is you
16 start this, where does this end? Does somebody say,
17 "Gee, Phil, you have great birds on your farm and we
18 want to take your land. And we like seeing your
19 cattle out there. Well, gee you got to keep your
20 cattle out there in perpetuity." And that's not for
21 us. We have to be flexible and be able to change.
22 And this law scares me because it's going to keep
23 marching right north.

24 DALE ROOT: 12468 Wesley Road, Town of
25 Shelby. I would like to express my thoughts on the

1 TOWN OF SHELBY PUBLIC HEARING

2 quarry tonight. I am opposed of this local law.

3 After the initial proposal ten years ago
4 the process went through the procedure of collecting
5 data which brings us here today. After the public
6 meeting at the school, both parties had the right to
7 bring forth evidence and the judge ruled on that. And
8 today we're here to discuss this.

9 What are we trying to protect? If the Job
10 Corps hasn't asked for protection, the wildlife refuge
11 hasn't asked for protection, and the STAMP project has
12 not asked for protection, and the experts said that
13 there are no problems or issues with the proposal, why
14 can't this thing just go forward?

15 I'm not sure who's paying for the
16 opposition of this. If it's taxpayer money, that
17 offends me also.

18 And I've never heard any sound evidence
19 from any expert that this stone quarry is going to, in
20 effect, chase all of the animals and species and
21 destroy the habitat in the area. And the Zelazny
22 family, as far as I know, are taxpayers in good
23 standing in this town. What they're proposing is
24 legal. It's gone through the process, and as far as I
25 can tell, I think they deserve the zoning and the

1 TOWN OF SHELBY PUBLIC HEARING

2 permits and let it go forth. Thank you.

3 AL CAPERSO: 2950 Gaines Road in the Town
4 of Gaines.

5 I want to address a few things. First of
6 all, I commend the Town Board for trying to enact the
7 overlay protection. There are many times where local
8 citizens lose control over what goes on, and what
9 you've instituted is a process where you would employ
10 a measure of common sense to a process that could get
11 away from you. And that process is, if you just look
12 around, money talks and nature walks.

13 How many times that's true. Just because
14 something is legal, doesn't really mean it's a good
15 idea. And that's where the Town Board comes in to
16 take a look at proposals to see if it's a good idea,
17 to see if it's common sense, to see if it helps the
18 greater good, not just line the pocketbooks of the
19 few. Thank you.

20 LORRAINE DAVIS: 4775 Baker Road in the
21 Town of Shelby.

22 I'd like to thank the Board for proposing
23 this proposal. I want you to know that I support it.
24 I also want you to know that I also oppose the stone
25 quarry coming into my community. No one is paying me

1 TOWN OF SHELBY PUBLIC HEARING

2 to say that, but I'm concerned about the quality of
3 life that I have there. I moved to Shelby because of
4 that quality of life, the quality of the air, and
5 quality of water, which doesn't come from heaven is
6 manna. It comes from the ground as folks' water
7 supplies.

8 I want you to know that I appreciate you
9 listening to the public, because I've attended all of
10 these meetings, and I have heard next to nothing that
11 supports this stone quarry. But all of this stuff now
12 comes out about how wonderful it's going to be for our
13 community.

14 I've seen stone quarries and I've seen the
15 communities around them. It doesn't look wonderful
16 for me. I don't want to lose my property values, and
17 I don't want to lose the air quality that I have here
18 with blasting and noise. And I also don't want to see
19 it do any damage to the refuge. Whether they can
20 supply the refuge with water that they are taking out
21 of the ground from somewhere and supplying it to the
22 refuge, the refuge is doing just fine without it. So
23 I support this and I thank you for drafting it.

24 RICHARD MAUER: 4795 Bigford Road.

25 I would also, as other people have said,

1 TOWN OF SHELBY PUBLIC HEARING

2 like to applaud the Town Board for taking the action
3 that they've taken. This step obviously is, I think,
4 a very prudent one, especially in light of the fact
5 that, as has been mentioned, the DEIS project or
6 process seems in some way to have missed some very
7 important points. The wildlife refuge is a very, very
8 valuable resource to not only the Town of Shelby but
9 to the surrounding communities.

10 I think we need to do everything possible
11 to protect that refuge from a number of land uses that
12 would be inconsistent with the location of the
13 wildlife refuge. I can't think at the moment of a
14 land use that would be less consistent with the
15 proximity of a wildlife refuge than a quarry
16 operation.

17 But that being said, let's just look at
18 the Overlay District as being, in my opinion, I think
19 a step in the area of common sense to protect a very
20 valuable resource that this community and many others
21 around enjoy. Thank you.

22 STEVE MILLER: 5278 Sour Springs Road.
23 Going to be like across the street.

24 But I would like to remind some of the
25 people here in Medina where Medina was formed from.

1 TOWN OF SHELBY PUBLIC HEARING

2 Wasn't it Medina Sandstone that started most of the
3 stuff right here?

4 Anyway, talk about the refuge, I like the
5 animals and stuff. I've worked in stone quarries, and
6 seen when I drive out in the morning there's cranes
7 out in the morning, there's deer all around. Doesn't
8 affect the wildlife all that much. They learn to
9 adapt. They've adapted. Whatever.

10 But to address, I'm -- I think that a lot
11 of people here don't own the property that they're
12 talking about doing all this to, so maybe they have a
13 little different opinion, but I'm not for it at all.

14 JAMES ZELAZNY: I live at 1172 Harrison
15 Road. Good evening. My name is Jim Zelazny and my
16 family has owned property in the Town of Shelby for
17 over 50 years.

18 I'm speaking tonight in opposition to
19 Local Law No. 2 which would create a wildlife
20 protection Overlay District banning businesses and
21 various uses of land on property in the vicinity of
22 the wildlife refuge.

23 In short, the facts on the record show
24 there's no basis for the Town's claim that the
25 proposed law is needed to protect the wildlife refuge.

1 TOWN OF SHELBY PUBLIC HEARING

2 The law would unfairly burden all property owners with
3 land in the wildlife District Overlay.

4 As written it bans a variety of businesses
5 and activities, and Local Law No. 2 also unfairly
6 targets my family's property and a quarry that we have
7 been in the process of permitting for over ten years.
8 The Town claims that enacting this law would protect
9 the wildlife refuge, but even in a brief review of the
10 facts shows that the Town failed to present any expert
11 witnesses, additional studies or verifiable scientific
12 data to prove that claim that the stone quarry in
13 Shelby would have a negative impact on the refuge.

14 A Town should not be able to pass a law
15 based upon general sentiment as they are attempting to
16 do with Local Law No. 2. And the Town has not
17 identified any basis for supporting the significant
18 restrictions they want to impose on a property -- of
19 the property owners in the Overlay District.

20 As a longtime farmer and landowner in
21 Shelby, my family values the refuge and what it brings
22 to the community which is why we welcome the extensive
23 review of the DEC to analyze the quarry's operation
24 and potential impacts.

25 After a decade of review and findings both

1 TOWN OF SHELBY PUBLIC HEARING

2 DEC and administrative law judge determined Frontier
3 Stone's proposed stone quarry posed no threat to the
4 environment or the refuge. I also speak to others'
5 elements of the proposed law number 2 including its
6 ban on a host of other property uses and businesses in
7 addition to mining, including banning various kennels,
8 campgrounds, air strips, repair shops,
9 telecommunications and more.

10 No explanation or studies have been
11 offered by the Town as to why these uses would
12 adversely affect the wildlife refuge. Property owners
13 in Shelby should not accept the Town's virtually
14 overnight seeking to ban us from many uses on our town
15 property and attempt to block a project that has been
16 developed for over ten years.

17 The studies show that Frontier's quarry
18 will not negatively impact the refuge, but will
19 actually provide a significant benefit to it. For
20 these reasons, as well as those stated by others
21 tonight, we request that the Town Board not enact
22 proposed Law No. 2, 2016. This hastily drafted law
23 aimed at blocking the quarry will negatively impact a
24 lot of other property owners in Shelby.

25 Furthermore, landowners who own over

1 TOWN OF SHELBY PUBLIC HEARING

2 60 percent of the land in the Overlay District have
3 signed a protest petition that was filed with the Town
4 today which requires a three-quarters vote to enact
5 Local Law No. 2. Thank you.

6 TODD ROBERTS: Salt Works Road, Medina.

7 I own land in the Overlay District and,
8 quite honestly, I feel as though I'm being punished
9 for something that I didn't do. And, quite honestly,
10 that's not fair. It feels like an injustice, just
11 because I happen to own land next to a national
12 wildlife refuge. Thank you.

13 MARGUERITE SHERMAN: I live on Wind
14 Street, Medina. I grew up on Fletcher Chapel Road.

15 I'm speaking on behalf of several family
16 members and friends who are also Town of Shelby
17 residents. I did not have them sign a petition, but
18 I'll be happy to write up what I'm about to say and
19 have them sign it and submit it to you.

20 We are in support of Local Law No. 2 which
21 supports our wildlife refuge. Many people come to
22 enjoy the wildlife refuge from all over the place.
23 People have chosen to reside near the wildlife refuge
24 for a reason. Please protect this choice and this
25 right to enjoy nature and its natural, not managed,

1 TOWN OF SHELBY PUBLIC HEARING

2 habitat.

3 I've heard the word "managed" several
4 times tonight. We don't want that. We want a natural
5 wildlife refuge. We don't want people to come in and
6 to fix things once they've put something in on this
7 land. We just want a natural environment.

8 DALE THURSTON: I live on West Avenue in
9 Medina, Town of Shelby.

10 I question the validity of putting an
11 Overlay District in. I really feel when you put this
12 much land in an Overlay District, you're going to
13 decrease the value of the land which means the taxes
14 are going to go up for the other people that have to
15 pick up the taxes. I don't know if you are taking
16 that into consideration, but taxes are a big thing.
17 And the more land you control with an Overlay
18 District, that's going to affect the taxes, that means
19 the rest of us pay more. Thank you.

20 SUZANNE KERRY: 5444 Salt Works Road,
21 Middleport.

22 When I moved here I lived at 503 Salt
23 Works Road, and about five or ten years after I moved
24 here, I got a notice saying that I lived next to a
25 wetland. So I'm restricted to what I can do at 543

1 TOWN OF SHELBY PUBLIC HEARING

2 Salt Works Road because I live on a wetland.

3 So I'd like to know how much of these
4 things I can't do because I live on a wetland, so
5 welcome to my world.

6 BILL KEPPLER: 4660 Water Works Road,
7 Medina, New York.

8 I'd just like to say in this instance in
9 history when the -- New York City and most of the
10 people that were going to be residents around Central
11 Park were so concerned about it that they thought, "Oh
12 my goodness, our property values are going to drop.
13 What does the city need a park for? Why should we
14 protect this land? This is ridiculous. The tax base
15 is going to go down. This is a terrible instance of
16 the government overstepping its bounds."

17 Well, nothing of those concerns was true.
18 The property around Central Park actually has more
19 than doubled. It went up exponentially in value.
20 It's the most valuable property in the City of New
21 York today, and the people of New York have an open
22 space to enjoy.

23 So I commend you on your efforts and I
24 thank you.

25 PETE ZELIFF: 10314 Johnson Road.

1 TOWN OF SHELBY PUBLIC HEARING

2 I oppose the Overlay District for a number
3 of reasons. We have probably several hundred acres, 5
4 to 600 acres that actually borders the wildlife
5 refuge, both federal and state. We have a program
6 that we bring in wounded veterans on our farm, so some
7 of the wording could potentially stop us from doing
8 that.

9 Conference resort complex. What we do is
10 actually considered a resort for wounded veterans. I
11 understand that you said that what we're doing now
12 wouldn't be stopped, but, you know, we're not
13 licensed. There's nothing to say that how that law is
14 interpreted going forward could change and potentially
15 change that for us.

16 But we did eventually want to make
17 somewhat of a resort or a bed and breakfast. There's
18 a lot of people that do come to the wildlife refuge
19 because it is an attraction for us. So why would we
20 not want a place to stay locally close to the refuge
21 and enjoy the refuge that we all want them to do.

22 Campgrounds. We're in the process, we've
23 just started, we have a ways to go, but creating
24 actually a Boy Scout-approved campgrounds on our
25 property that butts up against the wildlife refuge.

1 TOWN OF SHELBY PUBLIC HEARING

2 Why would we not want the Boy Scouts to come out and
3 have a place to camp? Once again, for the Boy Scouts
4 to explore the refuge along with our land as well.

5 Kennels. One of my properties has had a
6 dog kennel ran on it for a very long time. I've never
7 known of any issue with a wildlife refuge with a dog
8 kennel, so I do not know why we'd limit that.

9 Outdoor commercial recreation facilities.
10 Part of our land is a licensed shooting preserve which
11 falls within the district. This would limit us from
12 being able to expand that. With that we release
13 several thousand of pheasants a year. Many go over
14 onto the wildlife refuge and state land.

15 Any use required of mining, excavation
16 special permit, we do actually build additional ponds
17 on our property. This year with the help of a Federal
18 Wildlife Refuge we just built five ponds to increase
19 the duck habitat on our own property that does butt up
20 against the state wildlife refuge.

21 And then the last one, item 15,
22 convalescent homes for adults. A lot of the veterans
23 that come to us stay with us. Batavia has one of the
24 best PTSD clinics in the country. We've had veterans
25 from all over the country come and stay on our

1 TOWN OF SHELBY PUBLIC HEARING

2 property while they are attending PTSD clinic in
3 Batavia. These are my major concerns.

4 Not only that, I do believe that one of
5 the problems in government is that government always
6 creates new laws instead of enforcing the laws already
7 in place. You know, I believe that there's a zoning
8 issue with what everybody is talking out against. So
9 I believe that if the town just enforces their own
10 zoning laws, that there's no reason to create
11 additional laws to stop something that you potentially
12 already have a law for.

13 DICK KEPLERTON: 552 West Shelby Road,
14 Middleport mailing, Town of Shelby taxes.

15 Bottom line is, what it sounds like to me
16 everybody is against this quarry. I am appalled that
17 all of these people, or even the Town of Shelby, would
18 want to tramp on property owners' rights. Now granted
19 there are some things, but for somebody to tell me how
20 I can and can't use my property? What the heck? That
21 refuge is big enough.

22 And with this overlay, you're restricting
23 what Pete Zeliff wants to do. All these other guys.
24 And you show me a better steward of the land than a
25 farmer. And for you people to impose something like

1 TOWN OF SHELBY PUBLIC HEARING

2 that, we've given up enough to the darn government.

3 That's my statement.

4 JIM CONWAY: I live on Bigford Road, 5058.

5 I'm about a quarter-mile from Fletcher Chapel Road.

6 So I look at it on the surface and I would
7 think to myself, you know what? I guess I got to be
8 opposed to it because I'm going to have the increased
9 traffic and all the stuff associated with a quarry.

10 My problem is what are we giving up?
11 We're giving up our rights again. The federal
12 government takes enough of our rights, and now the
13 Town wants to come in and take more of our rights. I
14 don't know what I'm going to do five years from now,
15 ten years from now, but I don't want to have to look
16 at some zoning law that was passed in 2016 that makes
17 no sense to me whatsoever, because it's -- say I want
18 to put a kennel in, or whatever these things that are
19 restrictive. It has nothing to do with the wildlife
20 refuge itself or the quarry.

21 These things that are being imposed on us,
22 like the campground like mentioned, these are things
23 that make a lot of sense to the people that live in
24 this town down the road maybe. And then if you're
25 stuck with these regulations that you can't get rid

1 TOWN OF SHELBY PUBLIC HEARING

2 of, we lose.

3 To me, I mean, we're overregulated in my
4 opinion as it is. The quarry should stand and fall on
5 its own. I don't know that we should make more laws
6 and new laws because people aren't satisfied with what
7 happened so far.

8 That doesn't mean I'm taking a stand
9 either way. I'm just saying too much regulation.
10 Let's get rid of the regulations instead of adding
11 more. That's all I've got to say.

12 RICHARD DEPOTY: 10339 Latchfield
13 (phonetic) Road, Middleport in Shelby. And I'm right
14 on the cusp of it, but I'm here to stand with my
15 brother farmers that, you know what? We don't need to
16 be more regulated. And we are good stewards with the
17 land. I mean, we don't want our land trashed. We
18 don't want bad water. You know, all these things, and
19 there again, we do our due diligence. If we're going
20 to plant something we investigate it. What do we
21 need? Is the ground fertile?

22 If we're breeding cattle, we want the best
23 cattle to breed to have the best product out there.
24 We don't want our land destroyed. We don't want our
25 property destroyed. This is where we live. This is

1 TOWN OF SHELBY PUBLIC HEARING

2 where our kids grew up. This is where our heritage
3 and inheritance for our children is here. You know
4 what I mean?

5 That's all I wanted to say, is I oppose
6 the law, you know, what I mean? And let us be the
7 good stewards with our land.

8 DEBBIE WHITE: 11026 Dunlop Road, Town of
9 Shelby.

10 I stand in support of the town for the
11 proposal. I live right near the refuge, across the
12 street from my house actually, and I also volunteer
13 for the refuge. And I would like to see it remain as
14 it is without anything happening to it, you know, from
15 other things that might go on. And I guess that's all
16 I really have to say.

17 MR. DRAPER: We'll close the public
18 comment part.

19 Mr. Mahar, if you want to finish your
20 statement, go ahead.

21 MR. MAHAR: Frontier Stone did everything
22 that was required of us and beyond to examine and
23 re-examine the potential impact this planned project
24 would have on the refuge, the environment, the local
25 roads, the water resources, the impacts from blasting,

1 TOWN OF SHELBY PUBLIC HEARING

2 dust, additional traffic. This operation was designed
3 to benefit the community and the refuge, not harm
4 them.

5 In January of '16 the DEC issued a draft
6 permit for the quarry. Following the DEC's
7 determination, the matter was referred to an
8 administrative law judge for a hearing to review the
9 DEC's determination. That hearing also included
10 submissions by the Town of Shelby and Citizens for
11 Shelby Preservation. The judge found that any claims
12 made by the Town and CSP that the quarry would
13 adversely impact the wildlife refuge, were without
14 merit.

15 He ruled that all the subjects had been
16 sufficiently addressed by Frontier Stone, and any
17 other concerns were based on mere speculation which
18 the Town and opponents did not substantiate with any
19 reliable science, verifiable data or expert witnesses.

20 The administration law judge issued his
21 ruling to grant Frontier Stone a permit for a quarry
22 in the Town of Shelby on July 27, '16. On August 3rd
23 the Town proposed new Local Law No. 2, 2016, that
24 would ban mining operations and a great deal of other
25 businesses and economic development prospects that

1 TOWN OF SHELBY PUBLIC HEARING

2 might benefit the area.

3 As the Board well knows, Frontier Stone
4 and the Zelaznys have had a ten-year course developing
5 this project at a significant expense, and we
6 successfully completed a very rigorous permit process.

7 Yet the Town waited until after the DEC
8 and an administrative law judge ruled to grant us the
9 permit to propose Local Law No. 2, which specifically
10 prohibits any mining activity and any uses requiring a
11 mining excavation overlay. LL2 not only seeks to
12 restrict land use on the land designated for the
13 quarry project, but also attempts to restrict the land
14 use of all the property owners in that same part of
15 town. Many of those owners are hard working people
16 who pay their taxes and just want the right to use
17 their land as they see fit.

18 Many more are local farmers. Farmers have
19 long been the lifeblood of Shelby. They make their
20 living off the land and they've been responsible
21 stewards of it for decades. Everyone at Frontier has
22 worked very hard to try and sit down with you all to
23 show you the science, talk about the project and how
24 we can help the Town and support the refuge.

25 I'm stymied as to why no effort has been

1 TOWN OF SHELBY PUBLIC HEARING

2 made to extend to us the professional courtesy, but we
3 remain committed to being available for meaningful and
4 open communications with the Town Board.

5 This project meets and even exceeds all
6 the requirements of an environmentally safe and sound
7 operation. We worked tirelessly with the DEC
8 consultants and the STAMP project, and then designed a
9 way to get water to the refuge marshes whenever they
10 need it.

11 I've attended most Town Board meetings and
12 Planning Board meetings twice a month, every month for
13 the better part of ten years. I wouldn't be able to
14 look any of you in the eye for all these years if I
15 thought this project would be harmful to the
16 community.

17 In conclusion, I'd like just like to say
18 that passing Local Law No. 2 not only threatens our
19 ability to be of assistance to the refuge and a
20 positive contributor to this community, it threatens
21 free enterprise, mine, the Zelaznys, and all their
22 good neighbors, and it hinders economic development.

23 I ask you as thoughtful and fair-minded
24 people tonight to refrain from voting on this matter
25 until it is explored more in depth and to consider the

1 TOWN OF SHELBY PUBLIC HEARING

2 benefits of my project and also the ramifications LL2
3 will have on landowners in Shelby.

4 Thank you very much for letting me speak.

5 EDDIE ZELAZNY: I just have a short
6 statement. Everybody else covered most of what I was
7 going to say. I just want to say my family over the
8 years have been called greedy, accused of bribery,
9 dividing the community. But this right here is what
10 you call dividing the community.

11 I feel one or more of the Town Board
12 members should -- that live in the district, and I
13 feel they should abstain from voting on this law.
14 Thank you.

15 BRIAN McCARTY: Because they're allowed to
16 make a final comment I would like to do the same.

17 The facts support themselves and I
18 encourage any of you individuals, if you haven't, take
19 a ride down Hinman Road in the Town of Lockport.
20 You'll see what good neighbors Frontier Stone, aka
21 Lafarge, is not. Speak to the people who live there.
22 My father who's 82 years of age lives on Murphy Road.
23 Two of the property owners on Murphy and Hinman bought
24 the property up because Mahar and company want to put
25 their own road to divide the properties. That

1 TOWN OF SHELBY PUBLIC HEARING

2 depreciates the value of the homes.

3 Dog and pony show? Facts. You can buy
4 votes. Look at the facts and see who's been bought,
5 what the contributions have been to Orleans County by
6 Niagara County families. People have to be educated
7 to what's really going on here.

8 And I remind you again, this is going to
9 set a precedent about business against whether it's a
10 nature preserve, national or in your own community.

11 The people out there at the refuge have a
12 gag order. If you were able to talk to them, they
13 were allowed to make their personal comments, they
14 would not agree with all the facts and figures all the
15 smoke and mirrors. You're going to see a lot --

16 (There was a disruption in the audience.)

17 MR. DRAPER: Folks. Mr. Keppler. All the
18 comments are to be addressed to the board.

19 I'm going to remind you the hearing is
20 closed, whether you like what each other said or says,
21 not here. Take it to Tim Horton's and have a good
22 discussion. If you need a conference room, you're
23 welcome to borrow one.

24 Again, the public comment section is
25 closed. I wanted Mr. Mahar to have a chance to finish

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TOWN OF SHELBY PUBLIC HEARING

his statement. We're not going to rebut all the
comments we've already made. We've already made them.

Is there a motion to adjourn?

(The motion to adjourn was made and seconded.)

(TIME: 8:04 p.m.)

* * *

1

2

C E R T I F I C A T I O N

3

STATE OF NEW YORK:

4

COUNTY OF ONTARIO:

5

I, TAMMY B. FIGLER, do hereby certify that

6

I reported in machine shorthand the above-styled

7

cause; and that the foregoing pages were produced by

8

computer-aided transcription (CAT) under my personal

9

supervision and constitute a true and accurate record

10

of the testimony in this proceeding;

11

I further certify that I am not an

12

attorney or counsel of any parties, nor a relative or

13

employee of any attorney or counsel connected with the

14

action, nor financially interested in the action;

15

WITNESS my hand in the City of Farmington,

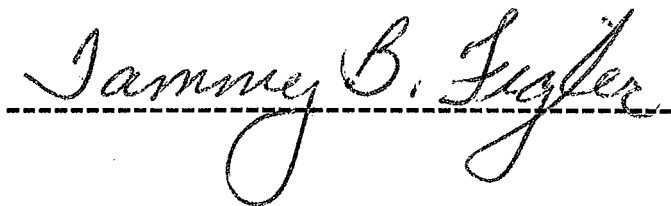
16

County of Ontario, State of New York.

17

18

19

A handwritten signature in cursive script, reading "Tammy B. Figler", is written over a horizontal dashed line.

20

21

TAMMY B. FIGLER

24

Freelance Court Reporter and

Notary Public No. 01FI4573724

25

in and for Ontario County, New York