

**REGULAR MEETING
SHELDON TOWN BOARD
July 18, 2018**

The Regular Meeting of the Sheldon Town Board held July 18, 2018 at the Sheldon Town Hall was called to order by Town Supervisor Brian Becker at 7:30 p.m.

Present: Supervisor Brian Becker
Councilmen: Jim Fontaine, Vince Kirsch, Mike Armbrust
Absent: Joe Meyer
Recording Secretary: Town Clerk Carol Zittel
Also present: David Ricketson, Highway Superintendent; Don Roberts, Code Enforcement Officer; Alyssa Cutcliffe, Zoning Officer
A signed list of all present is on file in the Town Clerk's office.

Minutes

A motion was made by Jim Fontaine and seconded by Vince Kirsch that the minutes from the June 20, 2018 regular meeting be approved.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Communications

Carol Zittel, Town Clerk, reported on the following:

#20 Community Fun Day

The Town Clerk notified the Board that quotes for movie night are too high for our budget. The Town will now host a "Community Fun Day" at the Varysburg Park with various arts and crafts projects. The Town Clerk asked the Board if they would be willing to provide the hot dogs and the grilling.

Reports

Financial Reports were presented for the month of June 2018 from the Town Supervisor, Town Clerk and the Town Justices. The Town Supervisor also distributed a cash flow report and payroll reports.

Highway Superintendent's Report

Highway Superintendent Ricketson reported on the following:

Department Activities

The Department has been busy hauling in chipping stone in preparation for sealing. Shoulder materials are ready for Minkel Rd. Repairs to damage from the rain storm are complete – nothing major.

Salt Building Funding – Senator Gallivan

Senator Gallivan's office has secured funding of \$75,000.00 for the replacement of the salt building. A preliminary application for grant funding was completed and sent to the Senator's office. DASNY will review the application and inform us if/when we receive the grant. The Highway Supt. will get specifications ready for the building.

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Creek Road – Dead Ended

Creek Road is officially dead-ended. The Highway Supt. will meet with Earl Fagan of the NYSDEC and see if there is any way to stabilize that bank. The Highway Dept. has packed it twice and it doesn't work. "There is a sandy silt oozing out of the bank and I don't see any end to it for us. We can keep sinking money into it and it won't work."

Paving of Centerline

Councilman Fontaine asked if the Department will be helping with the paving of Centerline Rd. Supt. Ricketson said they will not help pave it but will help mill it.

Supervisor's Report

Supervisor Becker reported on the following:

Traffic Diversion Program

The Town received \$5,100.00 in the second quarter from the traffic diversion program.

County Shared Services Program

The County Board of Supervisors is working on a county road shared services program.

Old Business

Presentation by Mary Kern, Town Assessor

Ms. Kern explained that land parcels in the Town were seriously under-assessed. Vacant land parcels were at a 40% equalization rate which was dragging down the entire Town's equalization rate. The assessor will be taking photos of every parcel in Sheldon. The Town Clerk will post notice on the Town website that the Assessor will be in a County vehicle taking photos of parcels. The Town has not been re-assessed since 2005. Houses that are assessed at \$110,000.00 are being sold at \$260,000.00 and that is not fair. When a property gets re-assessed a notice will be sent to the owner and the owner will have the opportunity to meet with the Assessor prior to the Board of Assessment Review meeting. Ms. Kern asked that any questions regarding assessment be sent to her office. Ms. Kern also noted that our prior assessor was requesting an additional \$20,000.00 to perform the re-assessment and that the Town is saving a significant amount of money by using the County for its assessment services.

Water Meter Installation

The water meters have been installed by Hardings. One household that is vacant due to the death of the homeowner still needs a meter as well as the fire hall and two more commercial units. The commercial meters need to be purchased by the Town and Hardings will install per the contract. Approximate costs for the commercial meters:

- Fire Hall - \$2,846.89
- C&G Praller - \$726.06
- Sheldon Elementary - \$874.57

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Varysburg Water

AJ Dyrbala introduced himself to the Board. AJ would like to take over as water operator. He recommends that the Board meter everything to deter from stealing water. He suspects that we will see an increase in water billing with the new meters.

Authorization to Purchase Commercial Water Meters

A motion was made by Jim Fontaine and seconded by Vince Kirsch to authorize the purchase of commercial meters (fire hall, elementary school, C&G Praller) at the approximate cost of \$5,662.20 for the Varysburg Water district.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Varysburg Water Pump House Renovation – Open Bids

The Varysburg water pump house renovation bid was advertised in the Batavia Daily. The only bid received was from Beechler Construction Inc. in the amount of \$11,516.00.

A motion was made by Mike Armbrust and seconded by Vince Kirsch to award the bid for renovation of the Varysburg Water pump house to Beechler Construction Inc., 5190 Carriers Road, Arcade, NY 14009 in the amount of \$11,516.00.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Thank you to Senator Gallivan

Supervisor Becker expressed the Board's gratitude to Senator Gallivan for obtaining the \$50,000.00 in grant money to pay for the installation and purchase of new water meters and the renovation of the pump house.

New Fund Balance Policy

A motion was made by Vince Kirsch and seconded by Mike Armbrust to table discussion on the proposed new fund balance policy until the Town Supervisor and bookkeeper have an opportunity to review it.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Main Street Garden in Strykersville

Councilman Kirsch reported that two local concrete companies (Fischer and 3D) in Strykersville are willing to assist with the concrete needs at the garden location. Steve Beechler from the Kiwanis will schedule a work date. Highway Superintendent Ricketson will call for a stake out so that six pieces of concrete can be removed. Councilman Kirsch and Supervisor Becker agreed that a call to Dig Safely is a good idea. Supervisor Becker gave a recap of how the Town came to acquire this property in Strykersville stating the following:

- The property was sold to the Town by Bill & Lynn Streicher for \$1.00
- The adjacent neighbors were asked if they wanted to buy the property and they declined

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- The Strykersville/Java Kiwanis have donated all labor and material and are leading the park effort
- The Town received a grant of \$1,000.00 from Beaver Meadow Audubon to purchase plants

Varysburg Water Tank Inspection

The tank inspection will be scheduled for August. Councilman Kirsch asked the Town Clerk to forward the prior report to Atlantic Testing Services.

Zoning Complaint – Mills Property

Zoning Officer, Alyssa Cutcliffe notified the Board that a summons has been sent to Mr. Mills and he will be in court this Monday. She also noted that Mr. Mills had inquired about applying for a special use permit to sell vehicles on his property. He has not submitted any paperwork as of yet.

Proposed Drug Rehabilitation Center at Sheldon Elementary Site

Supervisor Becker asked Councilman Fontaine to read aloud a draft letter written by Zoning Officer Alyssa Cutcliffe addressed to Attorney David DiMatteo. (note: The letter was labeled draft and it was never sent to Mr. DiMatteo as Mr. DiMatteo recused himself from the matter.)

Dear Mr. DiMatteo:

As you know, Mark Herman, Joseph Parker, Dr. Abassy, Dr. Bayumi and James Rutowski are working to purchase the former Sheldon School, in hopes to create a chemical dependency rehabilitation site and adult education center. The applicants have applied for a Special Use Permit and Site Plan review, and the application was reviewed by the Town of Sheldon Planning Board during a preliminary application review session on June 13, 2018.

Following the meeting on June 13, 2018, the Planning Board set a public hearing for July 11, 2018. On July 11, 2018, approximately sixty (60) Town residents and concerned citizens attended the public hearing, many of which voiced their concerns regarding this project.

Considering a large amount of information was gathered at that meeting, we believe it is important to hold a work session or two (2) with the Planning Board during July and August to process the information and help them to draft their recommendations to the Town Board for final approval or denial. Further, it may benefit the Town Board to receive the Planning Board's recommendations prior to the August Town Board meeting, so that the Town Board may have some time to discuss this matter, and not be forced to vote on the night that they receive the recommendation.

It is my understanding that per Article 6 §6020 (D)(2), the Town Board has sixty two (62) days after the public hearing to render a written decision on this matter, which would make September 13, 2018 the deadline. I write to you to ask you, as Town Attorney to review the process in the Zoning Law Article 6 §6020 and to ensure that this use fits within a Special Use Permit for the Town of Sheldon.

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Also, many questions were brought up at the meeting, including the definition of a drug rehabilitation facility and the standard for accommodation for this type of a facility, as it closely related to hospitals and care facilities etc. It is important that we understand if, the Town of Sheldon could even deny this type of facility, or if the Town can place restrictions on a facility of this type, such as limiting the number of beds etc.?

Lastly, I have put together a list of items which we believe are the main concerns of those in attendance at the Public Hearing:

1. Security and potential for increased crime in the area.
2. What is the protocol for keeping residents on site and what happens if they leave the facility without Doctor's release?
3. Perception of this occupancy (Is it an institution or considered a hospital facility? Is there an accommodation standard?)
4. Why can't Wyoming County Hospital absorb cost and patients who need rehab?
5. How will fire and EMS calls be dealt with and will this cause a strain on the Varysburg FD? How does the facility plan to address this strain if so?
6. What is the actual impact per parcel, for Varysburg/ Sheldon residents by putting this on the tax roll as a private facility?
7. What are the time frames for rehab and education facility? When will these residents be able to utilize the education facility, before, during or after treatment?
8. How many overdose deaths and patients are in Wyoming County? Sheldon?
9. Will priority be given to Wyoming County residents?

If you have any questions, please don't hesitate to contact the Zoning Department at the phone number listed above. I look forward to hearing from you in this regard.

Sincerely,

Alyssa N. Cutcliffe
Zoning Enforcement Officer
Wyoming County Zoning Department

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Letter from Attorney DiMatteo – Recusal from Drug Rehabilitation Matter

Supervisor Becker read aloud a letter from Attorney David DiMatteo:

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Brian Becker, Supervisor
Town of Sheldon
1380 Centerline Road
Strykersville, New York 14145

**Re: Herman, Parker, Guler & Rutowski
Purchase of 2588 School Street, Sheldon**

Dear Mr. Becker:

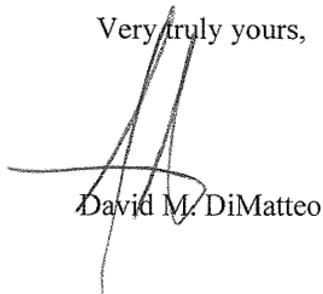
Please be advised I cannot be involved in the above entitled matter on behalf of the Town as the Applicant is a long-standing client of mine. This is an impermissible conflict and would not be fair to the purchaser nor the Town.

If you require an attorney, please procure competent legal counsel. I will gladly prepare a list of several recommendations, if needed.

Thank you for your understanding.

Please contact the office if you have any questions.

Very truly yours,



David M. DiMatteo

DMD/jh

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Need for an Executive Session

Supervisor Becker advised those present that the Town Board will meet in Executive Session at the end of tonight's meeting to discuss legal representation in the above matter.

Recap of Drug Rehabilitation Matter

- Alyssa Cutcliffe states that she and Don Roberts want to make sure we follow all proper procedures and to guide the Town in this matter
- Supervisor Becker states that the Town did not seek this out. The Town received an application that was thorough and complete. If both parties agree to move the date of a decision ahead that can be done. With the knowledge that the Town Attorney has to recuse, he thinks extending the date is a real possibility.
- Councilman Fontaine states that he was present at the initial planning board meeting on June 13, 2018 when the application was first introduced to the planning board. He said at that meeting Mr. Parker and Mr. Herman stated that the NYS Police and the Wyoming County Sheriff's Office were interested in having sub-stations at the proposed facility. Mr. Fontaine stated that it has since been found out that neither the NYS Police nor the Sheriff's office is interested in having a sub-station at the proposed facility. Finding this out has caused Mr. Fontaine to change his position on the issue.
- Councilman Armbrust stated that he does not have enough information to make a decision.
- Councilman Kirsch stated that he met with an architect that is putting up a similar facility in Sanborn. He stated that this facility in Sanborn is being constructed like a mental health facility. It is a 25 bed facility. Mr. Kirsch will follow up with the architect regarding security questions. Mr. Kirsch stated that he believes the Sanborn facility is a pretty isolated facility.

New Business

Attica CSD Request to Use Town Hall

A motion was made by Jim Fontaine and seconded by Vince Kirsch to authorize the Attica CSD to use the town hall on November 8, 2018 at 7:00 p.m. for a school board meeting.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Pioneer Cemetery Maintenance

A motion was made by Vince Kirsch and seconded by Mike Armbrust to approve the hiring of Joseph Yox to mow the Pioneer Cemetery at a rate of \$200.00 per year.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Sidewalk Easement – DG Strategic II, LLC – (Dollar General in Varysburg)

Don Roberts explains that the Dollar General requires a sidewalk and that the whole front section of the store will get a sidewalk. DG Strategic Attorney, Peter Sorgi was present at the meeting. Mr. Sorgi stated that the NYS Dept. of Transportation requires a sidewalk be installed. There

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was some confusion as to whether a permissive referendum was required as the paperwork given to the Town Clerk by the Town Attorney's office said one was required. Mr. Sorgi explained that an old version of the resolution must have been forwarded to the Town Clerk explaining that Mr. Sorgi had discussed the matter with the DiMatteo & Roach law office and their discussion concluded that a permissive referendum was not needed.

WHEREAS, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

WHEREAS, DG Strategic II, LLC, is the fee owner of real property commonly known as 2478 Route 20A, Varysburg, New York 14167 (the "Property"); and

WHEREAS, the Town Board of the Town of Sheldon wishes to enter into an easement agreement with DG Strategic II, LLC for a perpetual, non-exclusive sidewalk easement over a portion of the Property along the frontage of Main street; and

WHEREAS, the Town Board of the Town of Sheldon finds it in the best interest of the Town of Sheldon to accept the easement as set forth below:

1. DG Strategic II, LLC hereby grants to the Town a perpetual, non-exclusive sidewalk easement over a portion of the Property along the frontage of Main Street as more particularly described on the attached Schedule A and depicted on the attached Schedule B ("Easement Area") for the purpose of allowing the general public to utilize a sidewalk on the Easement Area, which sidewalk may be used by and for pedestrians only. DG Strategic II, LLC may not erect any permanent structure within the Easement Area, or otherwise block or interfere with pedestrian access over the Easement Area; provided, however, that DG Strategic II, LLC reserves the right to cross over the Easement Area and sidewalk in order to allow for vehicular and pedestrian access, ingress and egress to and from the Property.

2. DG Strategic II, LLC shall install the sidewalk and landscaping in the Easement Area and shall repair and maintain the sidewalk and landscaping in the Easement Area.

3. DG Strategic II, LLC reserves the right to use the Easement Area, including rights of access, and including rights of utility and signage installation, maintenance and replacement, in such a manner that is not inconsistent with the purposes as set forth in this Easement.

4. The Town, by their employees, servants, agents, and contractors, shall have the right to enter upon the Easement Area, and to utilize the same, whenever necessary for the exercise of the rights and privileges granted hereunder. Together with the right, but not the duty, to trim, cut, and remove at any time such growth or objects, or any nature, as, in the reasonable opinion of said the Town, may interfere with, obstruct, or endanger the rights and privileges granted herein to, or the facilities of, such Town.

5. The Town shall indemnify, defend and hold harmless DG Strategic II, LLC from all losses, liabilities, claims, demands, fines, penalties, suits, proceedings, actions and causes of

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action of any kind arising out of the use of the Easement Area or exercise of the rights granted herein by the Town, its employees, agents, contractors, invitees or licensees.

6. This Easement is subject to all matter of public record, such as all existing easements and rights of way.

7. This Easement shall be governed by the internal laws of the State of New York without regard to the principles of conflicts of laws.

8. This Easement shall be recorded in the Wyoming County Clerk's Office.

NOW ON MOTION OF Jim Fontaine which has been duly seconded by Mike Armbrust, be it

RESOLVED, the Town Board of the Town of Sheldon finds it in the best interest of the Town of Sheldon to accept the easement as set forth in terms 1-8 above; and

FURTHER RESOLVED, the Town Board of the Town of Sheldon hereby directs Brian Becker, Town Supervisor, to enter into the SIDEWALK EASEMENT AGREEMENT with DG Strategic II, LLC.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Calling of a Varysburg Water Advisory Board Meeting

Councilman Fontaine asked if the Board needs to appoint a new water operator. Supervisor Becker responded that first a meeting needs to be called with the Varysburg Water Advisory Board. Supervisor Becker wants to review water district spending with the Board to arrive at a salary. A meeting will be set up by Supervisor Becker.

Standard Work Day & Reporting Resolution & Record of Activities for NYS Retirement – Donna Almeter

A motion was made by Vince Kirsch and seconded by Mike Armbrust to approve the following resolution:

BE IT RESOLVED, that the Town of Sheldon hereby establishes the following standard work days for these titles and will report the officials to the New York State and Local Retirement System based on their record of activities:

Court Clerk, Donna Almeter, Term 3/9/18-12/31/18 – record of activities 16.19

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Standard Work Day Resolution – Water Meter Reader, Water Rents Collector, Tax Collector, Water System Operator, Water System Laborer

A motion was made by Mike Armbrust and seconded by Vince Kirsch to approve the following resolution:

BE IT RESOLVED, that the Town of Sheldon hereby establishes the following as standard work days for its employees and will report days worked to the New York State and Local Employees' Retirement System based on the time keeping system or the record of activities maintained and submitted by these members to the clerk of this body:

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Water Meter Reader, part time, standard work day 6 hrs.

Water Rents Collector, part time, standard work day 6 hrs.

Water Systems Operator, part time, standard work day 6 hrs.

Water Laborer, part time, standard work day 6 hrs.

Tax Collector, part time, standard work day 6 hrs.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Bills

Supervisor Becker confirmed that the Board had a chance to review the bills.

A motion was made by Mike Armbrust and seconded by Jim Fontaine that the

General Bills #188 to #221 for a Total of \$28,941.46, the

Highway Bills #105 to #117 for a Total of \$14,630.85, the

Trust & Agency Bills #21 to #23 for a Total of \$515.08, the

Varysburg Water District Bills #34 to #47 for a Total of \$791.74 and the

Lighting District Bills for a Total of \$791.74 be paid.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Comments from the Floor

Supervisor Becker opened the floor to comments at 8:40 p.m.

The following was open discussion regarding the proposed drug rehabilitation facility:

- Is the application available? Councilman Fontaine and Town Clerk Zittel responded that all information is available on the town website: www.townofsheldon.com
- How will this facility affect the resale value of my property? Councilman Armbrust responds that this question is another question we don't have answers for.
- What kind of vocational training will be held at the facility? What type of training can be provided in 30 days time? What type of security will be provided? Regulations are only as good as enforcement of those regulations. Will a fence be installed? Monitors? No answers are available.
- Will the letters that were read tonight at this meeting (Zoning officer letter and Attorney DiMatteo recusal letter) be available to residents? The Town Clerk will look into this matter but feels that FOIL will allow them to be.
- Mr. Geitner advised the Board to be careful of all the good things the applicants tell you will happen in Town. We are the taxpayers that paid for that school and we also go to the voting booth to vote for you. Councilman Fontaine responded thank you for the reminder. Councilman Kirsch responded that the message presented by residents at the public hearing were valid concerns. He also stated that the Board's focus is to collect information. We will await how they proposed to address these security concerns and how it would affect the hamlet.
- There should have been microphones at the public hearing – at times it was hard to hear.
- Councilman Armbrust stated that the planning board will do some research on the proposed facility and the zoning office will give us more information and there will be another public hearing.

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- Don Roberts stated that their office has no opinion. Our job is to lead the respective Boards' down the right legal path.
- Alyssa stated that the Town Zoning law as well as the comprehensive plan must be considered in the decision
- Is the proposed BOCES facility for people coming for rehab? Supervisor Becker responded that we do not have an answer for that question. Councilman Kirsch responded that it is unclear and we need to find that out.
- Can we give questions to your Board and the Planning Board? Councilmen Kirsch and Fontaine responded that yes, residents are welcome to forward questions to the Town Clerk and she will forward their concerns. Councilman Kirsch stated that we need the applicants to get into the details of the proposed facility.
- Will the decision be made by the Town Board? Don Roberts replies that the Town Board could technically vote on it but if there are still questions or concerns he thinks the applicant would be agreeable to extend another 30 days.
- Is this facility the same thing as the Spectrum facility in Warsaw? Supervisor Becker responded that this will be a different type of facility. Councilman Armbrust responded that Spectrum is out-patient only.
- Regarding the suggestion that the Town purchase the school: Councilman Kirsch responds that the Town Board is not looking to become a building owner and that it could be \$30,000.00 a year to maintain the building.
- Is there anything in the Zoning to prevent it? Don Roberts responds that a BOCES may not need a permit but a rehab facility would require a special use permit. Mr. Roberts notes that the planning board is in the process of reviewing and re-writing the town zoning law.
- There is an infrastructure concern. Varysburg has public water but does not have sewer. The elementary school was not a 24/7 facility. Supervisor Becker responded that he will talk to County public health on the capacity of the septic system. Don Roberts stated that after the last meeting we heard a lot of the same concerns and the zoning office is working with the applicant to get pages of information they need to provide if they can.
- Can the Board decline the application based solely on the residents' opposition to the facility? Supervisor Becker responded that the Town does not have legal counsel at the moment but will ask new legal counsel this question.
- Ms. Wert stated that she appreciates the need for a facility to combat the opiate problem but feels it should be in Warsaw.
- Is this court mandated rehab only? Councilman Kirsch replies that it could be both mandated and voluntary.
- Is primary focus involuntary? Town Board responds that they do not know.

Speed Limit in Varysburg

There was a short discussion of the speed limit issue in Varysburg. Residents had concerns that the speed limit is often ignored.

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Motion to Enter Executive Session

A motion was made by Mike Armbrust and seconded by Vince Kirsch to enter into executive session to discuss the hiring of legal counsel in the proposed rehabilitation facility matter.

The Town Clerk was excused from the executive session and Alyssa Cutcliffe and Don Roberts were invited into the session.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Exit Executive Session

The Town Clerk was invited back into the meeting.

At 10:10 p.m. a motion was made by Jim Fontaine and seconded by Mike Armbrust to exit executive session.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.

Adjournment

A motion was made by Jim Fontaine and seconded by Mike Armbrust to adjourn the July 18, 2018 regular meeting of the Sheldon Town Board.

Ayes: (4) Becker, Kirsch, Fontaine, Armbrust Absent: (1) Meyer Nays: (0) Motion Carried.