

CHILI TOWN BOARD  
August 19, 2009

A special meeting of the Chili Town Board was held on August 19, 2009 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Supervisor David Dunning.

**PRESENT:** Councilwoman DiFlorio; Councilwoman Ignatowski, Councilman Slattery, Councilwoman Sperr and Supervisor David Dunning.

**ALSO PRESENT:** Richard Brongo, Town Clerk; Jordon Brown, Deputy Town Supervisor; Dawn Forte, Supervisor's Secretary; Sandra Hewlett, Stenographer; Chris Karelus, Building Department Manager; Richard Stowe, Counsel for the Town.

The invocation was given by Richard Brongo.

The Pledge of Allegiance was cited. The fire safety exits were identified for those present.

**SUPERVISOR DUNNING:** Before we begin tonight's Public Hearing, I would like to read something. This is a Certification of Necessity.

"Whereas, the Town of Chili has been made aware of plans to introduce adult uses and adult materials to the Town of Chili, and

Whereas, these plans are, upon information and belief, about to be implemented and imminent in their introduction, and

Whereas, the Town of Chili, in order to adequately protect the health, safety and interests of its Town residents, requires the time provided by a moratorium on the establishment of any adult uses in the Town of Chili, to review and perhaps modify its adult use regulations, and

Whereas, The Municipal Home Rule Law, Section 20, Subdivision (4) authorizes the Supervisor of a Town in New York to certify the necessity of the adoption of a Local Law in an expedited fashion under such circumstances.

Now, therefore, David Dunning, as the duly elected Supervisor of the Town of Chili, hereby certifies the necessity of adopting the Local Law enacting a moratorium on the establishment of adult uses in the Town of Chili, as soon as possible."

That document is signed and notarized.

I will open the Public Hearing for anyone wishing to be lettered for the Local Law of 2009 to establish a six-month moratorium on adult uses in the Town of Chili.

Anybody that would like to be heard?

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PUBLIC HEARING

A Public Hearing was held by the Chili Town Board on August 19, 2009 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:02 p.m. to discuss Local Law of 2009 to establish a six-month moratorium on Adult Use Approvals.

Attendance as previously noted in the 8/19/09 Chili Town Board meeting minutes.

**CAROL THOMS, 122 Stryker Road**

**MS. THOMS:** I really applaud this, and I think this is something we really need to do. And I'm hoping while you're looking at this, you will look at things to make sure there is no chance of anybody trying to grandfather a business in as well as start something new. I think sometimes those things can sneak in. I know that happened in Scottsville.

Thank you.

**JAMES MARTIN, 34 Sunset Hill**

**JAMES MARTIN:** I would just like to --

**SUPERVISOR DUNNING:** If you would please, for the record, state your name.

**JAMES MARTIN:** Jim Martin, 34 Sunset Hill, Chairman of the Planning Board. I would like to speak obviously in favor of this. Um, I can remember when Family Video came before the Planning Board for site plan approval. There was a thorough hearing, and I believe several questions were asked about the type of videos that they would be supplying in their store. We were promised by whatever official was here from that organization that they did not delve into the business of adult entertainment, no x-rated videos would be rented on the site.

Obviously we can't trust people. We didn't condition the approval, all right, to disallow the -- that type of video. Maybe we should have. I don't know if legally we could have done that, Mr. Stowe, but anyways, at this point in time, it appears we can't trust people when they make promises to the various Boards within this community.

Therefore, I would definitely speak in favor of doing this at this point in time because I think that it certainly is not the type of entertainment that we want to have sold or rented in the Town of Chili.

Thank you.

DOROTHY BORGUS, 31 Stuart Road

DOROTHY BORGUS: I am also in favor of this resolution. I think the point that is obvious at this point is, too, is that we have to be more careful on our Boards that we capture all conditions and not rely on the verbal promises of applicants when they come before our Boards. This is a perfect case. We just -- we have just got to mind our Ps and Qs from now on and get those conditions down so we don't go through anything like this again.

I also think this is a heads-up. I know the code book is new and I know people on the Board have told me that there are many things about it that need to be fixed and changed and altered and improved upon, and I just would like to give a word of caution, if that is true, let's stay on this so that we don't get into this on another -- on another point. The Board needs to stay on that book of code and make sure that if there are things there that need to be fixed, that we aren't trying to play catch up again.

Thank you.

DEBBIE SPAULDING, 3 Osage Trail

MS. SPAULDING: I just wanted to say one thing. I don't know if any of you heard of Ted Bundy, but he was a serial killer who killed about -- I can't remember how many women. It was so many. Before he was electrocuted, he asked to speak to Dr. James Dobson who was the head of Focus on the Family. He totally trusted his judgment, and he linked his actions to pornography and to all the things that he had seen, how it -- after viewing them for a while, it made him want to act on it.

And so I just don't want anything like this in our community. We're really disturbed about it, and hopefully nothing will come from it.

BEVERLY NEDER, 82 Attridge Road.

MS. NEDER: I am in favor of passing this law. However, it might be a little bit too late for the Town of North Chili with Family Video. This is not the kind of thing we want in North Chili. We have three churches, a Christian college and two playgrounds within a one-mile radius of the store that is already renting adult videos. I don't know what you can do about it, but we don't want it there. That condition should have been put in writing at the time of the Planning Board. It was suggested at the time in 2005, and it was never put in the final conditions. And we don't want the kind of people that this type of sales will encourage.

Thank you.

SUPERVISOR DUNNING: Thank you.

ALAN LAWRENCE, 94 West Forest Drive

MR. LAWRENCE: If this moratorium is passed, which I'm in favor of, does that prevent Family Video from continuing to rent the adult videos that they have been offering for the last week or two, or will they be allowed to do it until a new law is placed into effect?

SUPERVISOR DUNNING: I will ask -- I will defer to Counsel on this if you would, please, Mr. Stowe.

RICHARD STOWE: Fair question.

The -- the Public Hearing that we're conducting and the Local Law that the Town is considering the adoption of merely places a moratorium on any approvals being issued after it's effective. There are -- there is language in the Local Law that speaks to legal existing uses. This is not about Family Video. This is not about North Chili. This is about the Town of Chili's zoning law.

And how passage of this moratorium may affect any individual state of facts anywhere in the Town, and how any later adopted amendment to our code may affect any individual place in the Town are all items that no one here, including myself, can answer until such time as we have more facts than we have today and have answers to questions that no one in this room is able to have. It's a fair question. Just not one that is capable of being answered at this time.

MR. LAWRENCE: So my understanding then is they would be allowed to continue until new facts --

RICHARD STOWE: I never said that.

MR. LAWRENCE: Okay.

RICHARD STOWE: The honest answer to your question without being flip, I don't know. I don't have enough information to answer that question. But I will acknowledge it's a fair question.

MR. LAWRENCE: What information would be --

RICHARD STOWE: All we can get. I don't want to focus on one place, because that is not what we're talking about. It truly is not the subject of this evening's endeavor. And I don't want it to become that. I'm pretty sure that everyone is aware of not only the spot that has been mentioned one or two times, but others as well, and how any of those are reviewed and handled is going to depend on actions that follow from tonight and from a thorough review of all of the facts. I'm not trying to be evasive. I'm trying to be honest.

MR. LAWRENCE: That's what we're looking for.

RICHARD STOWE: Don't know.  
MR. LAWRENCE: Thank you.  
SUPERVISOR DUNNING: Thank you.

JUDY OGDEN, 40 College Greene Drive

MS. OGDEN: I just wanted to, um, have you tell me in the article I read in the newspaper this morning, what I understood the article to say is that with our current laws, um, any establishment can offer this type of material as long as it does not exceed 20 percent of what their services, their -- their inventory is. Is that -- is that correct? And is that, um, where our current law stands, and is that what we're looking at as far as future modifications?

SUPERVISOR DUNNING: You're probably best to answer that one, too.

RICHARD STOWE: I apologize in advance. I honestly do.

The application of our current code to any state of facts with regard to an operation depends on the zone that it is in, whether they have had the adult use overlay application and how it is that our Compliance Officers measure whatever inventory and other ongoing items occur within the establishment.

It may be that one could lawfully enter into that business on a set of facts the way the reporter wrote the article this morning. It may also be that that is not allowed in certain segments of the Town. So without -- without trying to totally punt and not answer the question for you, the only honest answer I can give you is it depends. It depends on where. It depends on what is being done. And there is no recipe to follow, and there is no simple answer to any one of these questions.

So when our Building Department is presented with a complaint or a set of facts or a request for an investigation, they're going to take the same approach that they always take in gathering the information and attempting to deal with it and enforce the codes that we have. What we're talking about tonight really is, we have been made aware of areas that may, in fact, need further study and possible amendment so that we have better codes that make the elected officials of this Town more comfortable with what we have to enforce.

Simply taking a time-out on issuing anything new until the Comprehensive Plan process that we have got in place already, if this Board feels it is appropriate, can take a look at that and come back and report, and allowing our Town Building Department to digest what we have and follow up on information that we have.

This is about being prudent and calling a time-out on anything new and assessing what we have.

MS. OGDEN: I totally support that. You did just say, and just so I am understanding clearly, that their application is made in order to --

RICHARD STOWE: Whose application?

MS. OGDEN: I -- I thought maybe I misunderstood.

RICHARD STOWE: I'm sorry.

MS. OGDEN: I thought you said in order to engage in this type of material, application is made to do that. Did I misunderstand?

RICHARD STOWE: There are some areas where that is required. There are others where it may not be required under our current Town.

MS. OGDEN: In the Town of Chili?

RICHARD STOWE: Yes, ma'am.

MS. OGDEN: Thank you.

RICHARD STOWE: You bet.

JOHN WEBBY (phonetic), 335 Audino Lane

MR. WEBBY: May I first of all say I support this wholeheartedly being a resident of this Town and also attending church in this Town. I don't believe that that has a place in this Town.

I would recommend to the Board, though, to think about this very carefully, think about the repercussions if we allow this to go through and we stop this, it is -- protection of freedom of speech. You know, even though it borders we don't want it in the Town, ya da ya da.

I am seeing on the forums today, there are lawsuits pending against this Town if this goes through, and they are going to sue based on the fact that we are limiting their free speech. So as a Town resident, I beg this Board before we approve this moratorium, think of everything, the pros and the cons before we find ourselves in the middle of a very nasty lawsuit.

Thank you.

SUPERVISOR DUNNING: Which if I may, the purpose of this moratorium is so we can take a harder look at what is being done and -- excuse me, what our code says, what it does allow. We -- the Town of Chili is not forbidding any type of adult uses in the Town of Chili. Our code does allow in some areas -- there is specific areas of Town which adult business would be permitted providing they provide the -- they went through the site plan process and everything else, the planning process that other applications go through. We're not prohibiting this entirely from the Town of Chili. This just takes a greater in-depth look. That is why we want to do it. Stop, put the brakes on and take a look at our code and make sure it is right.

MR. WEBBY: I completely agree with you. That is what we should do.

RICHARD STOWE: Can I add one thing?

SUPERVISOR DUNNING: Yes.

RICHARD STOWE: No one on this Board is not mindful of the Constitution and the First Amendment rights that go with it. I don't blog. I choose not to blog. I don't -- I don't know, and

I don't really care what people blogging threaten.

COUNCIL WOMAN SPERR: They're having trouble hearing you.

RICHARD STOWE: I'm sorry. I do know -- I do know that the -- an action of a moratorium calling a time-out has little to do with anything other than processing applications and going forward. How anything that is done here this evening applies to any one set of facts will be determined in the future if and when there is an application to review and whether there is any activity that needs to be addressed by our Building Department. To anticipate any legal action based on enacting this moratorium against the Town or by the Town, is simply not what we're here talking about tonight.

MR. WEBBY: And I understand that. You know, but just -- whatever is happening with Family Video you know, they're already set of facts selling it. I am learning all this from what everybody else read in the paper this morning, but we just can't march into this guy's business and say, "Okay. We just passed a code, everything is going to go."

RICHARD STOWE: Nobody up here said that.

MR. WEBBY: I understand that, but that is pretty much what the media is leading that out to be.

RICHARD STOWE: That is another reason why a lot of us choose not to blog.

COUNCILMAN SLATTERY: You got to watch the media, huh? You can't believe everything you read, huh? (Laughter.)

DOROTHY BORGUS: Thank you.

I just had -- after hearing some of the comments from -- that I have heard since I spoke, I would just like to add this -- this suggestion. If -- if those of us in Chili, North Chili and all of Chili don't like the business practices of some of these businesses, the way we can -- we can take a stand on it is that we don't frequent their -- those businesses. We boycott them, we find out who is doing this, and we don't trade there any more. The dollars will do a lot to stab this out.

COUNCIL WOMAN SPERR: That is freedom of speech, too. That is a form of freedom of speech.

SUPERVISOR DUNNING: Is there anyone else?

The Public Hearing was closed at 7:20 p.m.

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COUNCIL WOMAN SPERR: One of my questions revolves around the complaint form, the online complaint form. We are hearing some of the comments from the residents tonight, if they are -- if they are lodging complaints about a particular business, is that a proper use of that complaint form into the Building Department?

SUPERVISOR DUNNING: Certainly.

COUNCIL WOMAN SPERR: Would you say that --

SUPERVISOR DUNNING: The complaint form that the Building Department, the Town of Chili uses is open for basically any complaint about pretty much anything in the Town of Chili. Whether or not it is something that the Town of Chili can take action on is another thing. But the complaint form is open to anybody who would like to fill out a complaint for whatever reason.

COUNCIL WOMAN SPERR: I was asked that from a resident earlier tonight and wanted to pass that on.

The other personal point I wanted to make tonight. This is not targeted at any one particular business. However, when information like this comes to light we have to sit back and take stock in it, and it leads me to think if we don't stand back and assess the situation, what happens down the road. If people feel there is an area of our code that they can get around and it brings the idea into other businesses where, "Well, I think I will do that, too, I can make money at that," and then along with that, then let's say they expand, businesses expand and they decide -- they think only because the percentage of their business is only this much, they can add other marketing and merchandizing items to what they may stock to sell in the way of magazines or videos or any of that type, so it is something that causes me great concern.

What also causes me concern is any establishment that happens to bring the type of clientele that, good, better -- I'm not trying to target anyone, but good, better or otherwise, in this one instance that was brought to us tonight, there are college students right there. And, um, I don't think that if I were sending my kid to school and they were staying there, that I would want them standing next to somebody in line who was purchasing an adult video. I don't know. That is just my personal opinion. I have college kids myself. But it is not targeted at them. It just begs the thought and allows us to -- to assess and examine. Just a few comments from me.

COUNCILMAN SLATTERY: I have nothing.

SUPERVISOR DUNNING: Anyone else?

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**TOWN BOARD DISCUSSION RELATED TO THE FOLLOWING RESOLUTION:**

SUPERVISOR DUNNING: Then I will move onto Resolution Number 283, SEQR determination, Local Law, 2009, for the establishment of a six-month moratorium on adult-use approvals.

**RESOLUTION #283 RE: SEQR Determination -- Local Law# \_\_\_\_\_ of 2009 for the**

**Establish a six-month moratorium on Adult Use Approvals.**

**OFFERED BY: Councilwoman Sperr    SECONDED BY: Councilman Slattery**

**WHEREAS**, the Chili Town Board has received the proposed Local Law# \_\_\_\_ of 2009 for the adoption of the Establishment of a six-month moratorium on Adult Use Approvals; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Chili, having reviewed the SEQR regulations hereby determines that the adoption of Local Law # \_\_\_\_ for the Establishment of a six-month moratorium on Adult Use Approvals is to be considered a Type II action.

UNANIMOUSLY APPROVED

**RESOLUTION #284 RE: Adoption of Local Law# \_\_\_\_ of 2009 for the Adoption of the Establishment of a six month moratorium on Adult Use Approvals to The Town Code, Town of Chili**

**OFFERED BY: Councilwoman DiFlorio    SECONDED BY: Councilman Slattery**

PURSUANT TO A CALL OF A REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF CHILI, COUNTY OF MONROE AND STATE OF NEW YORK, WHICH WAS DULY HELD AT THE TOWN HALL, 3333 CHILI AVENUE, ROCHESTER, NEW YORK 14624 ON THE 19th DAY OF AUGUST 2009, AT 7:00 P.M

**WHEREAS**, a proposed Local Law # \_\_\_\_ of 2009 was introduced to the Town Board of the Town of Chili, by Councilwoman Sperr on the 12th day of August, 2009 and,

**WHEREAS**, at a meeting of the Chili Town Board held at the Town Hall in the Town of Chili, New York on the 19th day of August, 2009, a public hearing was held at the 7:00 p.m. to consider adoption of the proposed Local Law # \_\_\_\_ of 2009 "to establish a six month moratorium on Adult Use Approvals;

**NOW, THEREFORE, BE IT RESOLVED**, that the Local Law # \_\_\_\_ of 2009 is hereby enacted by the Town Board of the Town of Chili.

**Duly put to a vote as follows:**

<b>Present:</b>	<b>Supervisor Dunning</b>	<b>voting</b>	<b>Aye</b>
	<b>Councilman Slattery</b>	<b>voting</b>	<b>Aye</b>
	<b>Councilwoman Sperr</b>	<b>voting</b>	<b>Aye</b>
	<b>Councilwoman Ignatowski</b>	<b>voting</b>	<b>Aye</b>
	<b>Councilwoman DiFlorio</b>	<b>voting</b>	<b>Aye</b>

MR. BRIXNER: On the notice that appeared on the front door of the Town Hall, there was notice of Special Town Board meeting. There will be a Special Town Board meeting on Wednesday, August 19, 2009, at 7 p.m. The meeting will be held in the Town Hall main meeting, Room 3333, Chili Avenue, Rochester, New York 14624. The purpose of this meeting is to consider a Public Hearing and a possible resolution for proposed Local Law and such other business as may come before the Town Board. Public comment will be taken. The meeting will take place at the Town Hall main meeting room.

Now, what I am asking is, when it says "public comment will be taken," does that mean we will or will have not have a Public Forum this evening?

SUPERVISOR DUNNING: There will be no Public Forum this evening. Public comment was taken for the past approximately 20 minutes or so.

MR. BRIXNER: Thank you.

The next meeting of the Chili Town Board is scheduled for Wednesday, September 2, 2009 at 7:00 p.m. at the Chili Town Hall main meeting room.

The meeting was adjourned at 7:24 p.m.