

Town Board Minutes
Town of North Castle
15 Bedford Road
Armonk, New York
on
May 5, 2009

At 5:30 p.m. Supervisor Berman called the meeting to order and the following persons were present:

Supervisor	Reese Berman
Councilmen	Rebecca A. Kittredge Gerald K. Geist William R. Weaver Michael J. Schiliro
Town Clerk	Ann Leber
Town Counsel	Roland A. Baroni

The meeting was immediately adjourned into Executive Session, which was then closed at 7:30 p.m.

Supervisor Berman reconvened the regular meeting at 7:35 p.m.

Councilman Weaver moved, seconded by Councilman Schiliro, approval of the minutes of the April 22, 2009 regular meeting.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Supervisor Berman made the following announcements:

- An update from Tax Receiver Colombo reported that 2009 tax collections as of May 5 are \$37,446,617.39 which is 95.30 % of the total warrant of \$39,291,352.54. The comparable collection amount at this time in 2008 was \$35,246,414.38 which was 94.71 % of the total warrant of \$37,291,352.54.
- Several events are scheduled in Armonk on Saturday, May 9: Armonk Sidewalk Sale, Greenacres Garden Club Plant Sale, The Great Duck Race and a visit from the County Clerk's Mobile Office.
- Between April and July, 2009, U.S. Census employees will visit every housing unit in the community to capture physical addresses and their GPS coordinates. Census employees will wear and display official identification and will carry hand-held computers. The actual census will take place in 2010.
- Please take common sense steps to slow the spread of the flu, reduce its impacts and prevent infection.
- There are two video segments currently airing several times a day on the Government channels. One is the report on the 2009 Town Budget and the second addresses the case for hiring a Town Administrator and is based on the work and report of the Administrator Review Task Force. These segments are both about eight minutes in length and are also available on the What's New page of the Town web site.
- The most recent update received from NYS Department of Transportation regarding paving of NYS Route 22 from Maple Avenue to Route 120 stated that the DOT is "encouraged" by meetings with the contractor, anticipates that the contractor will adjust his safety plan, and is now looking for the work to be done in mid-summer this year.
- The NYS DOT reports that the I-287 Stage III Reconstruction Project will continue at the bridges at Lake Street and North Broadway/Route 22.

Martye Futia, president of the North Castle Auxiliary Unit of American Legion Post 1097, announced that Poppy Week this year is May 24 to May 30 and introduced Poppy Girl Erica Withus. Mrs. Futia said all the proceeds from poppy sales go directly to veterans causes. Supervisor Berman added that poppies and contribution requests have been mailed to North

Castle residents. Mrs. Futia invited the community to attend the Memorial Day service in front of the American Legion on Saturday, May 30 beginning at 10:00 a.m., followed by refreshments at the Legion's pavilion.

Supervisor Berman introduced Judith McCarthy, Assistant Attorney General from the Westchester Regional Office of the Attorney General, who presented an overview of services provided by the Attorney General's Office:

- Defense of New York State in lawsuits against State agencies
- Mediation in response to consumer complaints regarding deceptive advertising and business practices
- Intervention to protect consumer rights related to retail bankruptcies, etc.
- Outreach through fraud prevention programs for seniors, internet safety programs at schools, and Project Sunlight, a web site created to promote transparency and accountability in government
- Assistance for New Yorkers regarding health care system complaints or questions is available through the Office's Health Care Bureau. The Bureau can be reached at 1-800-428-9071. The brochure, describing the free service, is on the What's New page of the Town's web site.

Supervisor Berman commented that Ms. McCarthy had been receptive and helpful with regard to the Dubos property, and she asked Ms. McCarthy to speak about the involvement of the Office of the Attorney General. Ms. McCarthy explained said since the Dubos property was under the oversight of the OAG, representatives of that office went to court with the Village of Mount Kisco to prevent the sale of the property to a private developer. The Attorney General stated that the sale would violate the terms of the charitable gifts to Dubos that had originally funded the land purchase. The Supreme Court Justice agreed and denied the Dubos' petition.

Supervisor Berman said that, as has been done each year under her administration, an oral summary of the independent audit report of the Town's Comprehensive Annual Financial Report was being presented at tonight's Town Board meeting. Alan Kassay and Jeffrey Shaver, of Bennett Kieslon Storch DeSantis, the government services division of O'Connor Davis Munns & Dobbins, LLP, gave an overview of the financial statements for the fiscal year ending December 31, 2008. Mr. Kassay said that the \$907,772 shortfall between 2008 actual and budgeted revenues was offset by the \$1,214,230 decrease between 2008 actual and budgeted expenditures. The Town's fund balance declined \$670,770 to \$1,192,574 at the end of the year. Supervisor Berman said that the Comprehensive Annual Financial Report will soon be available in its entirety via a link on the Finance Department page of the Town's web site.

Michael Fareri expressed his concerns regarding projected shortfalls in sales tax and mortgage recording tax, as well as a possible increase in the number of judgments and claims.

Councilman Geist moved, seconded by Councilman Weaver, receipt of a copy of a letter from Stearns & Wheler to RLJ Electric Corporation regarding the closeout of the Wastewater Treatment Plant Upgrade project.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Upon the recommendation of Stearns & Wheler, Councilman Geist moved, seconded by Councilman Weaver, authorization for Comptroller Donovan to make payment to S & L Plumbing and Heating Corporation, in the amount of \$2,672.35, in connection with the nitrogen removal project.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Weaver, receipt of letters from Westchester County Department of Health regarding the Annual Sanitary Survey of North Castle's Public Water Supplies. The County noted that the Custis Water Storage Tank in Water District No. 1 has two holes in the side which are discharging water. Superintendent Futia said that he is

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working with the County Department of Health and the Town Attorney to gain access to the property where the tank is located in order to make repairs.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

With regard to a proposed local law governing sewer use in the Quarry Heights area, Supervisor Berman said the section of the proposed legislation regarding connections to the pressure system needed to include a provision for granting easements to the Town for any new properties that may be added to the district. Town Attorney Baroni said he would add this provision.

Superintendent Futia commented that issues regarding operations and maintenance as well as the allocation of taxes for the district have been discussed with Supervisor Berman. Town Attorney Baroni said he will address these issues with Assistant Superintendent Misiti. Councilman Geist moved, seconded by Councilman Kittredge, receipt of the proposed local law and the scheduling of the public hearing for May 27, 2009.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Kittredge moved, seconded by Councilman Geist, receipt of a memo from Superintendent Richard Fon regarding safety improvements to the Town Hall court room which will be funded by State grants from the Justice Court Assistance Program. The Board gave approval to obtain proposals for architectural services.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Weaver, receipt of the first quarter sales tax update from Comptroller Donovan. Supervisor Berman said that a sales tax shortfall of approximately \$65,000 is expected for 2009; and the amount budgeted for this year is \$88,000 less than the amount which was budgeted in 2008.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Weaver, receipt of a revised investment policy from Comptroller Donovan, which includes a change in the maximum amount from \$18 million to \$25 million that the Town can have on deposit with some of its authorized banks. Ms. Donovan said this change was made to maximum that Town's interest income and added that the Town's deposits are fully protected by collateralization requirements of amounts in excess of the coverage provided by FDIC insurance.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Pursuant to receipt of a letter from the Armonk Lions Club, including an insurance certificate, naming the Town as additional insured, and a Hold Harmless Agreement, Councilman Geist moved, seconded by Councilman Weaver, approval for the Lions Club to use Wampus Brook Park for the 35th annual Fol de Rol, June 5 through 7, 2009. The Board also gave approval for the Lions Club to place signs under the eagle and on the median in North White Plains.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

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Councilman Weaver moved, seconded by Councilman Geist, approval of the Armonk Lions Club's request to name the bridge over Wampus Brook Park "Lions Way" to honor those who built the bridge in 1968 and to commemorate the Lions 70th Anniversary on June 5 of this year.

The roll vote was as follows:

Ayes: Councilmen Geist, Weaver, Schiliro.

Councilmen Kittredge and Supervisor Berman abstained due to their memberships in the Lions.

With regard to the request from Michelle Boyle, of AllAboutArmonk.com, for her web site to sponsor a Name the Bridge contest for the second bridge at the end of Wampus Brook Park, discussion took place regarding whether the naming of a public bridge should be determined through a contest sponsored by a private group. When Councilman Geist said that the Road Naming Committee refers naming recommendations to the Town Board, resident Sue Shimer suggested that this committee review the contest entries. Councilman Weaver moved, seconded by Councilman Kittredge, approval for the entries from the public naming contest to be referred to the Road Naming Committee for its consideration and, if an appropriate name is suggested, referral to the Board.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Weaver moved, seconded by Councilman Kittredge, approval of the request of General Foreman Useted to issue a license to Kleen Sweep Container Service to collect and dispose of refuse in North Castle.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Weaver moved, seconded by Councilman Geist, approval of the request of General Foreman Useted to release highway bonds to Peter Malavenda, Permit 570, in the amount of \$500; Claudio Villa, Permit 684, in the amount of \$500; Meg Gregg, Permit #743, in the amount of \$1,000; and Kenneth Kaufman, Permit 808, in the amount of \$500.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Upon the recommendation of General Foreman Useted, Councilman Geist moved, seconded by Councilman Kittredge, approval of the award of the bid for highway materials to Putnam Materials for washed, State approved, stone at \$25.10 per ton.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Weaver, receipt of a letter from Cablevision announcing the launching of additional HD channels.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Kittredge moved, seconded by Councilman Geist, receipt of a letter from NYS Department of Environmental Conservation regarding the permit modification for Sewer District No. 2 Wastewater Treatment Plant. Supervisor Berman thanked Superintendent Futia and Assistant Superintendent for their work in obtaining the modification which will result in yearly savings in laboratory fees.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

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Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, acceptance of a donation of \$3,200 from Armonk United-AYSO Region 204 for two permanent waste/recycling bins.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Weaver moved, seconded by Councilman Geist, receipt and filing of the Town Clerk's report for the month of April, 2009.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Schiliro, that a Notice of Claim from Ramkumar Paranjothy be received and referred to the Town Attorney.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Kittredge moved, seconded by Councilman Geist, authorization for the Supervisor to sign Amendment No. 3 to the contract with Stearns & Wheler for design and construction administration services to implement some Priority 2 upgrades for higher flows as discussed in the Stearns & Wheler June 2007 engineering report.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

With regard to the order calling for a public hearing on the increase and improvement of Sewer District No.2 Wastewater Treatment Plant for nitrogen removal purposes, Councilman Kittredge moved, seconded by Councilman Geist, adoption of the order and the scheduling of a public hearing for May 27, 2009. Councilman Geist said that approval of the increase and improvement would expand the plant's sewer capacity from 450,000 gallons per day (gpd) to 500,000 gpd. Mr. Geist added that the improvement may qualify for economic stimulus funds. Supervisor Berman noted that the nitrogen removal project is already on the NYS Environmental Facilities Corporation list and hopefully some of the expense for the \$5.3 million bond will be reimbursed.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Councilman Geist moved, seconded by Councilman Kittredge, permission for Superintendent Fon and Assistant Building Inspector William Richardson to attend the Firemen's Association of the State of New York seminar on May 28, 2009 at SUNY Purchase.

The roll vote was as follows:

Ayes: Councilmen Kittredge, Geist, Weaver, Schiliro, Supervisor Berman.

Noes: None.

Tony DeLuca submitted written comments, read aloud by Town Clerk Leber, to the Board, which complimented the appearance of the signage under the eagle, requested a shelter at the bus stop in front of Town Hall, recommended a four year term of office for the Supervisor, and objected to the American Legion's having a Memorial Day service only and no parade.

Christopher Carthy, owner of Pools of Perfection, said he objected to the creation of a Town Administrator position and thought the compensation for the Supervisor's position should not be reduced as this could relegate it to a part time position for a second income earner or a retiree.

Mr. Carthy said the Town Board members should not serve without compensation, as some residents have proposed, because the Town needs professional Board members as well as a professional Supervisor.

Lydia Rippstein asked which sewer district would be affected by the increased amount in the bond, who will pay for the increase, and why the nitrogen removal was necessary. Superintendent Futia said that the increase in sewer capacity has been recommended by the Board to accommodate existing businesses and future expansion. Supervisor Berman noted that the nitrogen removal component was a consent order from the NYSDEC, which will cost the Town \$4.7 million dollars in addition to the cost of the added capacity.

Mike Dritz asked how much it would cost to expand the capacity from 450,000 gpd to 550,000 gpd. Councilman Schiliro said this would involve obtaining additional permits as well as incurring additional costs. Supervisor Berman said the Board wanted to address present and future needs with a reasonable expansion, not a huge expansion.

Michael Fareri expressed his opinion that the Board should request Gene Matusow to resign from the Planning Board or another solution should be proposed by the Board.

Tony Futia said the previous and current Supervisor positions have been part time positions, although the incumbents have worked full time. Mr. Futia said that North Castle is not required by law to have a full time Supervisor. He also commented that all of North Castle does not receive the northern edition of the Journal News and asked if an inquiry could be made about this.

Barbara DiGiacinto read her letter aloud in which she stated that her applications before the Planning Board took considerable time to receive approval, because the Planning Board needed to ensure that the applications were complete and in compliance. She expressed her appreciation of the members' tireless efforts, and also thanked Gene Matusow for his decades of dedicated, fair and thoughtful service to the Town as both an elected official and committee member. She asked how the Town would be able to have residents volunteer if they have to face reckless attacks.

Supervisor Berman made the following statement in response to Mr. Fareri's request that the Town Board request that Gene Matusow resign from the Planning Board:

"It is clear that Mr. Fareri disagrees with positions that Gene Matusow has taken on the Planning Board and wants to get him off the Board. In a recent email to Dr. Matusow, which he copied to members of the Town Board and Planning Board, Mr. Fareri threatened to "make every attempt possible of having you removed from the Board."

"Here are the facts about Mr. Fareri's charge that Dr. Matusow should be removed from the Planning Board for violating the Town Building Code.

"One. Mr. Fareri submitted the question of Dr. Matusow's violation of the Town Building Code to the Town of North Castle Board of Ethics more than two years ago. Mr. Fareri and Dr. Matusow testified before the Board of Ethics, and the Board carefully considered all the facts. It rendered its opinion on May 22, 2007 and found that

It is not within the scope of our Board's functions to determine whether a Building Department permit was needed or not needed for the additional work in the Matusow attic. That is a Building Department matter. There is no provision of the Code of Ethics to which this claim may relate, and therefore there can be no finding of any violation of the Code of Ethics in this regard.

"Two. Although it was Mr. Fareri who voluntarily and on his own initiative submitted this matter to the Board of Ethics, he refused to accept the opinion he had asked them to render. Instead he continued to mischaracterize the building permit issue as an "ethics violation." For example, he asserted in a June 13, 2007 letter to the Journal News that

Failure by public officials to follow the building code should be considered an ethics violation and they should be removed from office and punished to the fullest extent of the law.

“Three. Mr. Fareri then asked for a second bite of the apple by requesting that the matter be brought back to the Board of Ethics because the Building Department had issued a violation with respect to the work in the Matusow’s attic. I advised the Board’s Chair of Mr. Fareri’s request, and the Chair advised me as follows on June 25, 2007:

The fact that the Building Department issued a violation for the attic work accomplished by Gene and Naomi Matusow does not come within the compass of issues with which our Board of Ethics can concern itself – limited as we are by the Code of Ethics provisions and their scope. It would be a waste of time, effort and money to refer the same issue to our Board of Ethics since we would have to reach the same conclusion – absent something more than the violation issued by the Building Department.

“Four. The matter was also separately considered by the Town Board. A motion was made in June 2007 that the Town Board ask Dr. Matusow to resign from the Planning Board. Although the motion died for lack of a second, the Town Board decided to investigate the allegations of violations of the Building Code. I reported on our investigation as follows on July 11, 2007:

Dr. Matusow has met with the building inspector and will correct his violation in one of two ways: by removing the sheetrock or by installing a sprinkler system. He acknowledged that he made an error, that it was unintentional, and that it will be corrected.

The Town Board concluded, though not unanimously, that placing wallboards over studs in an attic did not reach the level of offense which warrants removal from the Planning Board.

“Five. Mr. Fareri has announced his intention to organize a slate of candidates for this year’s Town elections and to make changes in the Planning Board an election issue. It is obvious that this renewed demand to change the decisions he himself asked for and that were rendered some two years ago are made in support of that political agenda. However, it is not the role of the Town Board to embroil itself in a political controversy by rehashing dead issues.

“Equally as important, we must keep in mind that members of our Planning Board and other Boards and Committees are all volunteers who give extraordinary amounts of time to public service. It would be irresponsible to remove them because of disagreements with their positions on matters within their jurisdiction.

“Two years ago I ended my report on the Board of Ethics decision with this statement:

These fishing expeditions and insinuations create a chilling effect on elected officials, public servants and volunteers, all of whom value their reputations, and are working to make North Castle a good place in which to live. I urge the public to wake up to what is going on here – to see the divisive consequences of one man’s disruptive behavior.

“It is unfortunate that it is necessary to repeat that statement now because of Mr. Fareri’s repeated attempts to disrupt Town business for his own political ends.”

Councilman Kittredge said that what Mr. Fareri has done to the Matusow family is inexcusable. Councilman Geist said the matter was dealt with over two years ago and to rehash it now is a detriment to the community. Mr. Geist asked who would volunteer for public service if they have to face relentless attacks.

The Town Board audited and approved payments totaling \$5,476,569.61 as indicated on Warrant #8.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 9:20 p.m. in memory of Horace Dahms.

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Ann Leber, Town Clerk

Dated: May 15, 2009

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