

Town Board Minutes
Town of North Castle
15 Bedford Road
Armonk, New York
on
March 9, 2011

Supervisor Weaver called the meeting to order at 5:00 p.m. and the following persons were present:

Supervisor	William R. Weaver
Councilmen	Rebecca A. Kittredge
	Michael J. Schiliro
	Diane Roth
	John J. Cronin
Town Clerk	Anne Curran
Town Attorney	Roland A. Baroni

The meeting was immediately adjourned into executive session, which was then adjourned into a work session at 6:30 p.m. The work session closed at 7:25p.m. The regular meeting was reconvened at 7:35 p.m.

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of the minutes of the February 9 and February 16, 2011 Town Board meetings.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

The minutes of the Public Hearing which commenced at 8:05 p.m. follow at the end of these minutes.

Recycling Committee Co-Chairs April Paresi and Deborah Cerar announced the upcoming Zero Waste Day collection date of April 30. Deborah Cerar described the organizations that will participate and the encouraged community awareness and participation. April Paresi described the Adopt-a-Bin program whereby donations will be used to purchase additional waste/recycling bins for Town parks and public spaces. Ms. Paresi also recognized the support of the community for this program and announced that the Recycling Committee has purchased a waste/recycling receptacle funded by donations collected at the October, 2010 Zero Waste Day.

Richard O'Rourke, Esq. Special Counsel to the Town concerning the Westwood Organic Recycling Facility agreement, described a proposed settlement on the matter, reached after protracted negotiations. Mr. O'Rourke said the work completed by Westwood was evaluated by Bill Kapp of Christara Corp. and that the Town Organic Recycling Facility Study Group endorses the proposed agreement. He added that the Town will collect \$150,000 from its insurance carrier towards the settlement.

Mr. O'Rourke said the agreement will allow the Town to terminate the contract and avoid the burdens and expense of litigation. The terms of the settlement include the following points:

- The Town shall pay to Westwood \$475,000 as follows:
\$425,000 within 30 days of full execution of the Settlement Agreement and \$50,000 paid in escrow to be released to Westwood upon completion of: 1) Removal of all mafia blocks currently at the site that the Town directs be removed; 2) Removal of mulch piles no later than June 30, 2011; 3) Removal of equipment, personal property and storage container from the Highway site.
- Westwood and its affiliated entities, release and discharge the Town and its former and present public officials, employees, volunteers, including all parties named in the Notice of Claim from all actions or charges.

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Councilman Kittredge moved, seconded by Councilman Schiliro, authorization for the Town Attorneys and Special Counsel to execute the Stipulation of Settlement in the matter of Westwood Organic Recycling LLC.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Cronin, Supervisor Weaver.

Noes: None

Abstain: Councilman Roth

Councilman Schiliro moved, seconded by Councilman Roth, appointment of Diane Kurzer to the Recycling Committee.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a letter from Veneziano & Associates granting a further extension, through March 23, 2011, for the Board to render a decision on the special use permit application for 7 Round House Road.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Cronin, Supervisor Weaver

Noes: None

Abstain: Councilman Roth

Supervisor Weaver recognized Anthony Veneziano, Esq., who was at the meeting on behalf of Crabapple Properties, LLC, owner of the property commonly known as the Cockren Property, located at 22 Old Route 22, Armonk. Mr. Veneziano stated that the property was designated for the construction of 10 Town Middle Income Units (MIUs) and his client has discussed participation in the County's Affordable Housing Program, and that Westchester County has stated that it supports the development of these units pursuant to the Stipulation of Settlement whereby 750 units of affordable housing are required to be developed in the County. Mr. Veneziano requested that the Town Board authorize the Supervisor to sign a letter demonstrating support of the development of these 10 units to be built and marketed towards the goals established by the County. Mr. Veneziano emphasized that the letter is a preliminary step in a process that will take 3-6 months.

Several residents commented on the proposed change in the units from Town administered Middle Income Units to those administered as County Affordable Housing Units. Objections included that the Town would be relinquishing control to the County regarding the requirements and screening of applicants, the County's lower income threshold, the location of the property and that residents should have been notified and have the opportunity to voice concerns before the Town Board makes this decision.

Housing Board Chair, Barbara DiGiacinto, stated that the Housing Board was consulted and they unanimously support converting the planned MIUs units to County Affordable Housing.

Alan Zaretsky, representing the owners of Crabapple Properties, stated that this is an opportunity to get something done in a positive way; to get the affordable housing units built and to free money up to move forward on other projects, including building the remaining units in Cider Mill.

Councilman Kittredge moved, seconded by Councilman Schiliro, to authorize the Supervisor to sign a letter supporting the development of units on the Cockren Property, Old Route 22, to comply with County Affordable Housing Settlement Agreement.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Supervisor Weaver

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Noes: Councilmen Roth, Cronin

In connection with letters from two residents requesting Board of Ethics review, Councilman Cronin made the following statement:

“Further down the agenda, two residents submitted the same form letter with the suggestion of my improperly participating in Board discussions related to contractors who may or may not be working on my home renovation. As ridiculous as these suggestions are, they should be looked at by the Ethics Board immediately, and I would ask the Board to make the unanimous referral. Also, until the Ethics Board advises me otherwise, I will now recuse myself from any of these discussions involving these parties.”

On the duly adopted motion of Councilman Cronin, letters from Maria Gentile and Michelle Sorkin were referred to the Board of Ethics.

Planning Director Kaufman summarized the Planning Board’s positive recommendation concerning the petition to amend Town code to permit a supermarket in the PLI Zoning District, via Town Board special use permit, with the following additional requirements:

- (1) Supermarket property shall be located within 500 feet of a State Road (not including an Interstate Highway) in an effort to ensure adequate local access and limit the impacts upon the local road network.
- (2) Traffic access to any supermarket in a PLI District shall be from a public street of adequate capacity and design to safely and conveniently accommodate the expected traffic from such use.
- (3) The provision of vehicular and pedestrian improvements on and around the supermarket property necessary to mitigate any vehicular and pedestrian impacts associated with the operation of a supermarket.
- (4) The provision of any required improvements to mitigate and buffer the potential sight and sound of supermarket activities, including, but not limited to, the enclosure of off-street loading facilities and the planting of landscape screening.
- (5) All Supermarkets shall be connected to public water and sewer.
- (6) Amend Section 213-45A of the Town Code to modify the following off-street parking requirement:

Grocery, convenience stores or supermarkets 1 for each 200 square feet of gross floor area

Mr. Kaufman stated that the intent is not to open the floodgates to retail use in the PLI district, but rather to carve out the supermarket with appropriate conditions for Town Board determination of this permitted use.

Councilman Roth moved, seconded by Councilman Schiliro, receipt of letter from Director of Planning, Kaufman, regarding the positive Planning Board recommendation concerning a petition to permit a supermarket in the PLI Zoning District, and further moved, to schedule a public hearing on April 27, 2011. It was noted that the Planning Board would be lead agency.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Supervisor Weaver

Noes: None

Abstain: Councilman Cronin

Planning Director Kaufman summarized the Planning Board’s positive recommendation Concerning the petition to amend Town code to permit an Assisted Living Use in the PLI Zoning District, via Town Board special use permit, with the following considerations:

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The Planning Board notes that the existing PLI zoning provisions would permit a maximum floor area of 109,974 square feet. As proposed by the Applicant, the assisted living facility contains 118,008 square feet; slightly more than permitted by the underlying zoning with the density transfer. It is noted, however, that the Comprehensive Plan contemplates permitting a density bonus for this type of use.

Mr. Kaufman stated that the Town Board needs to provide guidance on the appropriate density for this project and the maximum development potential for this site.

Councilman Roth moved, seconded by Councilman Kittredge, receipt of a letter from Director of Planning, Kaufman, regarding the positive Planning Board recommendation to permit assisted living use in the PLI Zoning District, and further moved, to hold a Public Hearing on April 13, 2011. It was noted that the Planning Board would be lead agency.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of Zoning Petition and Special Use Permit Application from Treat Dog Hotels, LLC, and further moved that the matter be referred to the Planning Board for its study and report, and requested the Planning Board declare its intent to be Lead Agency.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, approval to purchase a replacement vehicle in the amount of \$22,000 for the Sewer and Water Department. The vehicle was designated for replacement and the funds for the expenditure were approved in the 2011 budget.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, support of a proposed application for landmark status of windmills in Water District No. 2.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Pursuant to the recommendation of the Landmarks Preservation Committee to consider an assessment ordinance to benefit homeowners who preserve historic properties, Councilman Roth moved, seconded by Councilman Schiliro, the scheduling of a public hearing for April 27, 2011.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Schiliro moved, seconded by Councilman Kittredge, receipt of Landmarks Preservation Committee Certificate of Appropriateness, dated March 1, 2011, for an additional alteration at the landmarked property at 481 Bedford Road, Armonk. It was confirmed that in all other respects the alterations at the property would remain as approved in the Certificate of Appropriateness, dated July 15, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

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Councilman Kittredge moved, seconded by Councilman Schiliro, approval of a Holiday Display permit application from Anita Cozza to place a nativity near the gazebo at Wampus Brook Park from December 1, 2011 to January 9, 2012.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of the release of performance bond to MBIA for construction work done at 113 King Street, Armonk, in connection with abandonment of former cul-de-sac on Cooney Hill Road.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Roth, authorization for the Town Attorneys to execute Stipulations of Settlement in the matter of *M.J. Lacav, LLC vs. Town of North Castle*, Index No. 23882/09 et al. (vacant land) and *Ettlinger vs. Town of North Castle*, Index No. 24201/10 (2 family – NWP).

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Schiliro moved, seconded by Councilman Roth, approval of the request of Assistant General Foreman Norris to contract with Rocco's Landscaping for the supervision of the removal of town trees as follows:

Rental of 57 foot bucket truck with operator and one groundsman for various tree service per day (8 hours): \$830.00

Rental of 70 foot bucket truck with operator and one groundsman for various tree service per day (8 hours): \$830.00

Emergency pricing per hour: \$160.00 (3 hour minimum)

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, that the Supervisor be authorized to make the budget transfers that follow at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, authorization for the Supervisor to sign a lease agreement with Westchester County Department of Parks, Recreation and Conservation in the amount of \$26,046 for the Fisher Lane commuter parking lot for the term April 1, 2011 to March 31, 2012.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, authorization for the Supervisor to sign an Inter-Municipal Agreement between the Town of North Castle Police Department and the Westchester County Department of Public Safety for use of the Repository for Integrated Criminalistic Information (RICI) system.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

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Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, that Richard Fon, Superintendent of DPW/Building Inspector be authorized to assume all responsibilities of the Office of Highway Superintendent for a term ending December 31, 2012, pursuant to the following resolution:

"Whereas, with the recent retirement of the General Foreman and Administrative Head of the Highway Department the opportunity has arisen for the Town Board to further consolidate and transfer the operation and functions of the Highway Department to the recently created department of Public Works (DPW) and

Whereas, since its inception in the year 2008, the DPW has been administered in an efficient and cost effective manner by its Superintendent, Richard Fon and

Whereas, the Town Board has reviewed the compatibility of the positions of Superintendent of DPW and Highway Superintendent with appropriate Westchester County personnel officials and has received confirming memoranda on this subject from its own labor counsel.

Now therefore be it,

Resolved, that Richard Fon, Superintendent of DPW/Building Inspector of the Town of North Castle be vested with all the powers and duties of the Office of Highway Superintendent for a term ending 12/31/12, it being the intent of the Town Board that the two positions be deemed compatible and shall be held simultaneously by the same individual in order to achieve maximum efficiency and cost effectiveness."

FURTHER RESOLVED, that this resolution shall be effective March 9, 2011.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of terminal leave pay for Craig Useted.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of terminal leave pay for Fabio Giordani.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Kittredge moved, seconded by Councilman Schiliro, acceptance of the resignation of Charles Cancro from the Architecture Review Board, effective immediately.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

Councilman Schiliro moved, seconded by Councilman Roth, the following items on the consensus agenda:

- Receipt of Workers Compensation Report for a Highway Department employee.

- Receipt of Cablevision franchise fee payments for 4th quarter 2010 in the amount of \$31,037 from Cablevision System, and in the amount of \$7,229 from Southern Westchester System.

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- Receipt of the Town Clerk's monthly report for the month of February.
- Receipt of a letter from Verizon informing the Town of a rate change for Verizon's FIOS TV Premier Service.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None

After all persons were heard who desired to be heard, the Supervisor closed at 12:05a.m. in memory of Dr. Michael Ettenson, Joan McConnell, Eugene McLaughlin, Frank Oderifero, Joseph A. Ragusa, and Martye Futia, wife of Anthony Futia, Jr., Superintendent of Water and Sewer Department.

Anne Curran, Town Clerk

Dated: March 21, 2011

PUBLIC HEARING

March 9, 2011

At 8:05 p.m. Supervisor Weaver reconvened the Public Hearing which was adjourned from April 14, 2010 for the purpose of considering the adoption of a Local Law to amend Chapter 107 Fire Prevention to require installation of sprinklers in all new residential and commercial buildings.

The following correspondence, received after April 14, 2010, was marked Exhibit "E" for the record:

- Reports and information received from Residential Fire Sprinkler Advisory Committee Chairman John Heimerdinger on May 12, May 26, June 2 and August 12, 2010.
- Memo from Fire Marshal/Assistant Building Inspector Bill Richardson dated February 14, 2011.
- Full Environmental Assessment form.

Luci Labriola-Cuffe, First Assistant Chief of the Armonk Fire Department said that sprinkler systems save lives and provided the following information, according to the U.S. Fire Administration:

- A fire occurs in a residential structure every 66 seconds.
- In 2009, 56.7% of all reported fires occurred in one or two family structures; however these fires caused 70% of the fire deaths in the U.S.
- More than 25% of firefighter on-duty deaths are associated with residential fires.
- To date in the U.S. there has never been a fatality in a fire where there was a properly installed sprinkler system.

Matthew Manfredi, former Fire Chief of the North White Plains Fire Department, member of the Residential Fire Sprinkler Advisory Committee, and business owner, read the Executive Summary from a study entitled *Benefits of Residential Fire Sprinklers* which reviewed Prince George's County Maryland 15 year history with its single family dwelling sprinkler ordinance adopted in 1992. The study published in August 2009 found the following:

- From 1992 to 2007 in Prince George's County, there were 101 fire deaths and 328 civilian injuries in single-family and townhouse fires that were not protected by sprinkler systems.
- In houses with sprinkler systems, no deaths occurred in structure fires during the same period, and there were only six civilian injuries.
- The average loss for structures with sprinklers is about half the loss for structures without sprinklers.

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- The per-square-foot cost to install a system in a single family home has decreased over the years. A recent National Fire Protection Agency study found that the average cost of installation was \$1.61 per sprinklered square foot.

Michael Fareri said he is not in favor of sprinklers at this time. He said due to significant improvements in the NYS Building Code, newer houses do not have the same potential hazards as older houses. He cited the June 2009 NYS Residential Sprinkler Committee Report which concluded that NYS would not require sprinkler systems in one and two level residential houses. He said that sprinkler systems require a large water supply and most areas of the Town do not have public water, while some of the surrounding towns with sprinkler ordinances do. He added that effective early warning systems through the use of smoke detectors, which are mandatory, and fire alarm systems are a less expensive than the local cost of sprinkler systems which he said would be \$5.00 to \$6.00 per square foot. He said it should be the owners decision how to protect their homes.

Frank Benish agreed it should be each resident's prerogative whether to have a sprinkler system and mandating sprinklers would negatively impact real estate values and perhaps a tax abatement should be considered for those who install them. He said freezing pipes could affect system operation and annual inspections were costly. He added that the Pennsylvania House recently passed legislation to lift the residential sprinkler mandate.

Bob Greene also expressed opposition to the proposed legislation. He said that NYS and the County have good building codes.

Mr. Manfredi said that residential structures have completely self-contained fire protection systems and most operate at a rate of ten gallons per minute which provides ten minutes of water to extinguish a fire. He said he firmly believed that a single sprinkler head at the house fire on Nethermont Avenue could have saved two lives on New Year's Eve 2009. He said that it has been over twenty years that the Fire Departments have been working toward adoption of a sprinkler ordinance. The legislation being considered tonight was adopted by the Town Board in June 2008, but NYS would not permit it to be implemented due to one section of the law which has since been stricken from the legislation. Mr. Manfredi said due to the revision to the legislation the Town's attorney recommended the public hearing be held for the Board to consider the adoption of the law and for it to be sent to NYS for approval.

Rachel Newhouse, Builders Association of the Hudson Valley, parent company is the NYS Builders Association, spoke in opposition to the legislation and said improved electrical and building codes have reduced fire fatalities. She read information about various costs associated with sprinkler systems, stating the overall cost was about \$18,000 to \$20,000 for a 2,800 square foot home. She said that sprinklers systems introduce a new moisture system in the house.

John Heimerdinger, member of the Armonk Fire Department for 53 years, said he did not totally agree with Mike Fareri's comments that newer houses do not have the same potential fire hazards as older houses. Mr. Heimerdinger said the contents found in houses today burn faster and hotter, as well as produce more noxious fumes. He said fires get away from you quickly and he would not put a firefighter on a roof of a newer house due to a greater risk of collapse within a shorter time period as compared to an older home. The numbers of volunteer firefighters in the U.S. has decreased from 120,000 to 90,000 and it is difficult to recruit and retain firefighters. He said the fire service only considers saving lives and protecting firefighters. Within the last 24 hours, nine children died in residential fires in the U.S. He said that people often remove batteries from smoke detectors or forget to change them, but sprinkler systems are foolproof.

Tony Futia said he was a volunteer firefighter for about ten years and he has discussed sprinkler systems with retired paid firefighters who are not in support of sprinkler systems and do not view them as life saving devices, but as damage control devices. They said smoke detectors are life saving devices and people often die from smoke inhalation before sprinklers go off. Mr. Futia said he did not think sprinklers should be mandated, but if there were at some future time, water district tax incentives should be given to residents who install them.

Speaking of a recent house fire in Armonk, Ms. Labriola-Cuffe said there was a fire alarm system in the two year old house on Greenway Road, but for an unknown reason it failed to

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work. The residents did not know there was on fire on the upper floor which resulted in the roof being burned off the house. The Fire Department was alerted by a neighbor who happened to be driving by the house. She said a fire doubles in size every 30 seconds and sprinkler systems prevent this from occurring because they react to fires when they are in their infancy. She said there are dry sprinkler systems and other options available in addition to wet systems.

Councilman Kittredge thanked the Residential Fire Sprinkler Advisory Committee for all their work.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Kittredge moved, seconded by Councilman Schiliro, that the Public Hearing be adjourned at 9:00 p.m.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Anne Curran, Town Clerk

Dated: March 21, 2011