

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

Town Board Minutes
May 5, 2009

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

Town Board Minutes
May 5, 2009

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.

Town Board Minutes
May 5, 2009

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.

Town Board Minutes
May 5, 2009

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.

Town Board Minutes
May 5, 2009

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.

Dated: May 15, 2009

Ann Leber, Town Clerk

PUBLIC HEARING

May 5, 2009

At 8:05 p.m. Supervisor Berman stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on May 5, 2009 at 7:30 p.m., or as soon thereafter, at North Castle Town Hall, 15 Bedford Road, Armonk, New York 10504, for the purpose of considering the adoption of a Local Law to amend Chapter 148 entitled Peddling and Soliciting of the Code of the Town of North Castle.

By Order of the Town Board
Ann Leber, Town Clerk

Dated: April 25, 2009
Armonk, New York

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

A memo from Town Clerk Leber dated April 14, 2009 was marked Exhibit "D" for the record.

Supervisor Berman asked Town Attorney Baroni to describe the proposed changes to the peddling and soliciting law. Mr. Baroni said, that after revisions to the current law were deemed necessary by the Town Clerk, a study committee was formed which reviewed the ordinances of other towns with the goal of developing more modern legislation for North Castle. He added that Kristen Holt Cinque of his office researched the constitutional provisions relating to peddling and soliciting, and several drafts of the revised law were reviewed by the committee. The proposed law being considered for adoption includes new sections on the constitutionality and purpose of the law; distinctions between soliciting and canvassing which has a registration requirement only; requirements for police background checks and vehicle registration information; penalty provisions and an appeals process for the denial of an application or the revocation of a license.

Supervisor Berman said the committee, comprised of Councilman Kittredge, Chief D'Angelo, Lts. Fisher and Simonsen, Kristen Holt Cinque, Town Clerk Leber and herself, had met over several months to develop a law which would primarily protect the Town's residents and also be constitutionally correct. Supervisor Berman recommended that in the Exemptions section 148-16A.6 the word "its" in describing a candidate's representatives be revised to "his or her".

When resident Sue Shimer, Pond Lane, asked to whom the term "appropriate police personnel" in section 148-22 referred, Mr. Baroni said it referred to the Police Chief or his designee. Mrs. Shimer asked if it were necessary for appeal hearings to be held before both the Town Clerk and the Police Chief. Supervisor Berman explained that it was necessary due to the close coordination between the Town Clerk's Office and the Police Department in the enforcement of this law. Mr. Baroni said he would revise the language to reflect "Police Chief and his designee."

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Weaver moved, seconded by Councilman Schiliro, that the Public Hearing be adjourned at 8:10 p.m.

The roll call vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Geist, adoption of Local Law 4 of the year 2009 to amend Chapter 148 entitled Peddling and Soliciting of the Code of the Town of North Castle. The Local Law follows at the end of these minutes.

The roll call vote was as follows:

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

Noes: None.

Ann Leber, Town Clerk

Dated: May 12, 2009

TOWN OF NORTH CASTLE
Local Law No. 4 for the Year 2009
(Adopted May 5, 2009)

A Local Law to amend Chapter 148 entitled “Peddling and Soliciting” of the Code of the Town of North Castle.

Be It Enacted by the Town Board of the Town of North Castle as follows:

1. Chapter 148 entitled “Peddling and Soliciting” is hereby amended in its entirety to read as follows:

§148-1. PURPOSE AND INTENT.

- A. It is the purpose and intent of this chapter to control and regulate the activities of peddlers and solicitors in the Town of North Castle. History has shown that there is a need for investigation and review of the past conduct of applicants in the interest of promoting public safety and morals, child welfare, economic well-being and highway safety and usage. This chapter is intended to protect the peace and security of our citizens in their homes and neighborhoods; to safeguard consumers against fraud and inferior goods; and to prevent congestion and unsafe conditions on the streets and highways of the Town.
- B. In order to accomplish this goal, the Town Board is exercising its authority under §10(1)(ii)(a)(12) of the Municipal Home Rule Law, §136(1) and §137 of the Town Law and any other applicable provision of law now or hereafter enacted, to supersede and/or expand upon the applicable provisions of §137 of the Town Law, and any other applicable or successor law.

§148-2. Definitions. (Content remained the same, only section number changed)
As used in this chapter, the following terms shall have the meanings indicated:

CANVASS - Any person, either principal or agent, traveling either by foot or by any conveyance who canvasses as herein defined. For purposes of this chapter, the entity which engages a person or their agent for the purpose of canvassing is also considered a canvasser within the meaning of this section and is subject to all provisions herein.

CANVASSER – Any person who, by going from house to house or place of business to place of business or any combination thereof, predominantly seeks contributions, fundraisers, petitions, solicits membership, disseminates information or conducts activities which would not be characteristic of a peddler or solicitor.

COMPANY — Any association of individuals, partnerships, firms, corporations, societies or any other organization.

ESTABLISHED PLACE OF BUSINESS — A permanent building, store or depository in which or where the person transacts business and deals in goods, wares, merchandise or services in the ordinary and regular course of business.

PEDDLE — To go from house to house, from store to store, from place to place or from street to street, or to deal out, distribute or dispense, to sell and make immediate delivery or to offer for sale and deliver any goods, wares, merchandise or provisions, including books or periodicals, in possession of the seller or any combination thereof at any place within the Town of North Castle other than from a fixed place of business.

PEDDLER — Includes any individual, firm, partnership, corporation, unincorporated association and any principal or agent thereof. The words "peddler," "hawker" and "huckster" are considered synonymous terms. For the purposes of this chapter, the entity which engages a person as its agent for the purposes of peddling or soliciting is also considered a peddler within the meaning of this section and is subject to all provisions herein.

PERSON — Includes any individual, firm, partnership, corporation, unincorporated association and any principal or agent thereof.

PUBLIC PLACE — Any street, sidewalk, alley or other public way and public park, square, space or grounds or any publicly owned or leased land or buildings.

SOLICIT — To go from house to house, from store to store, from place to place or from street to street, or any combination thereof, to sell or take orders for goods, wares, merchandise or provisions, including books or periodicals, for future delivery, or for services to be performed at any place within the Town of North Castle, or to distribute advertising matter.

SOLICITOR — Any person, either principal or agent, traveling either by foot or by any conveyance who solicits as herein defined. For purposes of this chapter, the entity which engages a person or their agent for the purpose of soliciting is also considered a solicitor within the meaning of this section and is subject to all provisions herein.

STATIONARY LOCATION — Includes any point or distance within 0.3 of a mile in all directions of a stationary location.

VEHICLE — Any motor vehicle as defined in the Vehicle and Traffic Law of New York.

VEND — To peddle, hawk, sell, barter or lease, or to offer to sell, barter or lease, or to display for sale, barter or lease any goods, wares, merchandise or services in a public place.

§148-3. License required. (Content remained the same, only section number changed)

It shall be unlawful for any person or company to peddle or solicit within the Town of North Castle without having first obtained a valid license therefor as provided herein.

§148-4. Information required on license application.

- A. Any person desiring a license as herein provided shall file with the Town Clerk a written application, duly verified by the applicant upon forms prescribed by the Town Clerk. Such application shall include but not be limited to the following information:
1. The name, address (local and legal), date of birth, social security number and motorist identification number of such person and the name of the corporation, firm, association, club, partnership or any other organization represented by such person.
 2. A description of the type of goods, wares or merchandise which the applicant wishes to sell or solicit orders for or the type of service for which the applicant wishes to sell or solicit orders.
 3. The number and kind of vehicles to be driven by the applicant or in which the applicant will be transported in the solicitation, peddling or canvassing; the registration data for each such vehicle; and the license data as to all operators of such vehicles
 4. The County Health Department permit number, if a food vendor.
 5. Current tax status (i.e., whether tax exempt, not-for-profit, etc.).
 6. Proof of registration with the Department of State Office of Charities Registration and/or the Attorney General Charities Bureau, if applicable.

7. If peddling or soliciting for a corporation, the date and state in which it is incorporated, a copy of the Certificate of Incorporation and the name, address, date of birth and social security number of all officers.
 8. Whether or not the person applying for the license and each assistant and employee who shall engage in peddling within the Town has ever been convicted of any crime and, if so, under what name, with a listing of such convictions or other disposition thereof, including the crime, jurisdiction, date and sentence imposed and the name and location of the court where such record is on file and may be verified.
 9. A statement whether any license similar to or like that provided for in this chapter was issued or denied to the applicant within the current or prior calendar year, whether in the Town of North Castle or elsewhere; and, if issued, whether such license had been suspended or revoked and setting forth the reasons for such suspension or revocation.
 10. A list of streets, roads or neighborhoods where the licensee shall conduct business and the dates and times any soliciting or peddling is to take place.
- B. Such application shall be accompanied by three photographs of the person applying for the license and each assistant and employee who shall engage in peddling within the Town, 2 inches by 2 inches in size, taken within 30 days prior to the date of filing of the application, full face on a white background. The applicant must furnish conclusive proof of possession of a State of New York sales and use tax permit if applicable.
 - C. Each applicant applying for the license and each assistant and employee who shall engage in peddling within the Town shall submit two sets of fingerprints to the North Castle Police Department. Said fingerprints shall be taken by the North Castle Police Department, and the applicant shall pay any fees required. If the applicant is a company or corporation, then two full sets of fingerprints of a principal officer of said company or corporation shall be provided in accordance with this subsection as well. In addition, a certified check or money order, in the amount specified by and made payable to the New York State Division of Criminal Justice Services to cover the cost of processing fingerprints, shall accompany the application.
 - D. Said application shall not be further entertained by the Town Clerk until the Police Department shall have had sufficient time to satisfactorily complete the investigation of applicant as described below, and until said written report of the Police Department has been received by the Town Clerk.

§ 148-5. Investigation of applicant; issuance of license; records.

- A. No application for a license shall be approved, nor any license issued under the provisions of this article, until the Police Department has reviewed and examined the criminal history record information received from the processing of the fingerprints.
- B. No license shall be granted to any applicant who has been convicted of a felony or misdemeanor involving violence, dishonesty or deceit.
- C. Upon receipt of such application, one copy shall be referred to the North Castle Police Department, together with full sets of the applicant's and each assistant and employee's fingerprints for such investigation of the applicant to be made as it deems necessary for the protection of the public good.
- D. After completion of the investigation and review of the criminal history pursuant to this section, the Police Department shall forward to the Town Clerk a written report indicating the existence or non-existence of a reason(s) to grant or deny the application.
- E. If, as a result of such investigation of each applicant, assistant and / or employee, no such convictions referred to in Subsection B are found to exist, the Police Department shall

attach a statement to the application that it has no record of the applicant and shall return said application to the Town Clerk. No license shall be issued under the provisions of this chapter until the Police Department has submitted the written report referenced in this section.

- F. The Town Clerk shall deny an application and refuse a license in the event of an unsatisfactory police report or if the applicant refuses to complete the application in all respects or if there have been five (5) or more complaints filed against a previously licensed licensee within the prior year. A false statement contained in any application shall be mandatory grounds for the rejection of such application by the Town Clerk and may lead to criminal sanctions against the applicant where applicable.
- G. The Town Clerk may deny an application and refuse a license to any person:
 - (1) previously convicted of a violation of this chapter; or
 - (2) if it appears from the application and investigation that the applicant is not a person of good moral or business character unless the applicant can show good cause why the application should be granted; or
 - (3) if, within the preceding 12 months, there have been five (5) or more complaints against the applicant, and / or the applicant's assistant(s) and employee(s).
- H. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, or the license is denied for any reason set forth herein, the Town Clerk shall endorse on such application his or her disapproval and his or her reasons for the same and shall notify the applicant that the application is disapproved and that no license will be issued.
- I. Upon approval of the application by the Town Clerk and the payment of the prescribed license fee by the applicant, the Town Clerk shall prepare and deliver to the applicant his license. Such license shall bear the words "peddler or solicitor," contain the Seal of the Town of North Castle and the signature of the issuing officer and shall show the name, address and photograph of the licensee, the kind of goods to be peddled or solicited thereunder, the amount of fee paid, the license number, the date of issuance and the date of expiration of such license, as well as the state license number or other identifying description of vehicles, if for a vehicular license. Such permit shall be kept on the person of the licensee, assistant and / or employee during such time as said licensee is plying his trade.
- J. The Town Clerk shall keep a record of all licenses issued.

§148-6. Fees.

- A. The following fees shall be paid on application to the Town Clerk:
 - (1) For each person, corporation or company proposing to peddle or solicit, whether on foot or from a licensed vehicle, a filing fee of \$200.
 - (2) For any permit issued after July 1 in any year, the fee shall be \$100.
- B. The annual fee herein provided for shall be assessed on a yearly basis, and all licenses shall expire on the 31st day of December next succeeding the date of issuance.

§148-7. Replacement of License.

- A. To each person licensed under this chapter who loses his permit issued by the Town Clerk, the Town Clerk shall issue a replacement, upon said person submitting an affidavit setting forth the facts surrounding the loss of said permit.

§ 148-8. Possession and display of license required.

Every peddler or solicitor licensed under this chapter shall have his license in his immediate possession at all times when peddling or soliciting and shall display the same upon demand of any person, and proper and conspicuous posting of the New York State sales tax permit shall be required.

§148-9. Name and address on vehicle.

Every vehicle used by a licensed peddler or solicitor in or about his or her business shall have the name of the licensee and his or her address plainly, distinctly and legibly printed or affixed in letters and figures at least two inches in height in a conspicuous place on the outside of the sides of every such vehicle, and such name and address shall be kept so painted plainly and distinctly at all times while such vehicle is in use during the continuance of the license.

§ 148-10. Documents not transferable.

No license issued under the provisions of this chapter may be transferred from one person to another person or from one vehicle to another vehicle, nor shall any license so issued be used or worn at any time by any other person than the one to whom it was issued. In the event that a licensee shall permit any other person to possess or use such license, such license shall automatically be revoked, and the licensee shall thereby be guilty of violating this chapter.

§148-11. Use of stationary locations.

No peddler or solicitor shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location or to operate in a congested area where such operation might impede or inconvenience the public, nor shall he be permitted to operate for longer than 10 minutes in any one location, which shall include a distance of 0.3 of a mile in all directions from any one location. For the purpose of this chapter, the judgment of any Police Officer exercised in good faith shall be deemed conclusive as to whether or not the area is congested or the public impeded or inconvenienced.

§148-12. Canvasser registration and approval.

- A. It shall be unlawful for any person to engage in the business of canvasser, as defined in §148-2 of this chapter, without having first officially registered with the Town Clerk. Registrants shall complete forms provided by the Town Clerk which shall require, but not be limited to, the following information:
 - 1. The name and address of such organization, firm, association, club, corporation or partnership;
 - 2. The name, address, date of birth and social security number of such person(s) who will represent the organization;
 - 3. Three photographs of each registrant, 2 inches by 2 inches in size, taken within 30 days prior to the date of filing of the application, full face on a white background;
 - 4. Proof of registration with the Department of State Office of Charities Registration and/or the Attorney General Charities Bureau, if applicable.
 - 5. Current tax status (i.e., whether tax exempt, not-for-profit, etc.).
 - 6. The date and state of incorporation, along with a copy of the Articles of Incorporation;
 - 7. The dates and times canvassing is to take place;
 - 8. A list of streets, roads or neighborhoods where the canvassing is to take place;
- B. The Town Clerk and Police Department shall investigate all registrations, once properly completed and duly signed by the applicant. After completing its investigation, the Police Department shall forward to the Town Clerk its recommendation as to whether the registrant shall be granted the permission to canvass within the town.
- C. The Town Clerk may refuse to officially register any canvasser for cause, after written notice, for the following reasons, including but not limited to:

1. Fraud, misrepresentation or false statement in the registration form;
 2. Fraud, misrepresentation or false statement made in the course of canvassing activities;
 3. Conviction of a felony or a misdemeanor which, in the judgment of the Town Clerk renders the registrant undesirable, except by a vote of the Town Board;
 4. Evidence of performing canvassing activities in an unlawful manner or in such a way as to breach the peace or as to endanger the public health, safety or general welfare;
 5. Incomplete registration form.
- D. Upon receipt of a completed application, favorable report of the Police Department's investigation, the requisite fee and upon compliance with all the requirements of this chapter, the Town Clerk shall officially recognize the registration of the subject canvasser, specifying the particular canvassing authorized. The date of the recognition and expiration of the registration, the name and specific nature of the canvassing organization, as well as the canvasser's name and photograph, shall be included on an identification card to be provided for each canvasser by its canvassing organization.
- E. Each organization shall renew its registration on a yearly basis by providing the Town Clerk with a current list of the names, addresses, dates of birth and social security numbers of its canvassers, as well as the times, dates and places it intends to canvass and current pictures of the canvassers.

§ 148-13. Restrictions and Prohibited Acts.

- A. Peddling, soliciting or canvassing (licensed or unlicensed) shall be undertaken only between the hours of 10:00 a.m. and 7:30 p.m. or sunset (whichever occurs first), and such license shall not be valid for use by the holder on Sundays or legal holidays.
- B. It shall be unlawful for any peddler, solicitor or canvasser to enter on to any premises or private property through any other point other than the front main entrance, unless otherwise invited by the owner.
- C. No peddler, solicitor or canvasser shall frequent any particular residence, street, sidewalk or public place so as to cause a private or public nuisance. If any person licensed hereunder has been refused or denied access to a private residence, it shall be unlawful for them, or any assistant or employee to reenter the property the same day.
- D. It shall be unlawful for any peddler, solicitor or canvasser in plying his trade to enter upon any premises or property or to ring the bell or knock upon or enter any building whereon there is painted or otherwise affixed or displayed to public view any sign containing any or all of the following words: "No peddlers, no solicitors, no agents," or other wording, the purpose of which purports to prohibit peddling or soliciting on the premises.
- E. No peddler, solicitor or canvasser shall peddle, vend or sell his goods or wares within 200 feet of any church or place of worship or any place occupied exclusively as a public or private school or for school purposes, nor shall he permit his cart, wagon or vehicle to stand on any public highway within said distance of such school property.
- F. No peddler, solicitor or canvasser shall solicit any business whatsoever at the scene of any accident or emergency within the Town of North Castle.
- G. No peddler, solicitor or canvasser shall cry out, blow a horn, ring a bell or use any sound-amplifying system upon any of the streets, alleys, parks or other public places of said Town or upon any private premises.
- H. No person shall peddle, vend or sell his goods, wares, services or merchandise in any congested area when or where such activity may impede, endanger or inconvenience the public or add to the congestion of such place or area.

- I. All parking and traffic regulations imposed by the Town of North Castle or the County of Westchester or the State of New York shall be observed, and vehicles shall not be parked to block or restrict access to and from any road or private drive and shall be forthwith removed from private driveways upon request.

§148-14. Use of scales or measures.

If the applicant for a peddler's or solicitor's license uses scales or measures in his business, he shall also file with his application for a license a certificate issued by the Westchester County Sealer of Weights and Measures that his scales or measures have been tested and sealed.

§ 148-15. Persons holding veterans' licenses.

Any honorably discharged veteran of the Armed Services of the United States who has obtained a veteran's license from the Westchester County Clerk to hawk, peddle, vend or solicit trade, in pursuance of law, on the streets and highways of the Town of North Castle shall be exempt from the provisions of §148-5 and §148-6 of this chapter. Upon approval of the veteran's application, the Town Clerk will stamp a copy of the County License for said veteran to ply his trade in the Town of North Castle, subject to all other provisions of this chapter. Said permit will be stamped in ink on the face of the county license.

§ 148-16. Exemptions.

A. This Chapter shall not apply to:

- (1) any person who has maintained a place of business in the Town of North Castle for a period of at least six consecutive months prior thereto, or his duly authorized representatives;
- (2) minors, 18 years or age or under, who reside within the Town North Castle and who solicit, peddle or canvass on behalf of a charitable, religious, athletic, social, educational or civic organization, including but not limited to the Boy Scouts, Girl Scouts, Cub Scouts or Brownie Scouts or clubs, classes or organizations sponsored by a public or private school.
- (3) any person soliciting at the express invitation of the person solicited;
- (5) any sales held pursuant to statute or by order of any court; or to insurance brokers, insurance agents, real estate brokers, real estate agents, stockbrokers and securities salesmen, all of whom must hold any required license from the State of New York for such professions or businesses;
- (6) any candidate running for office or his or her representatives, or individuals supporting said candidate or any individuals supporting or opposing referenda or propositions at general or special elections;
- (7) solicitations, sales or offers on behalf of a society, association or corporation organized and operated exclusively for charitable, not-for-profit, educational, civic, patriotic, benevolent, religious, philanthropic purposes and not for the pecuniary benefit, no part of the net earnings of which inure to the benefit of any private shareholder or individual, when such solicitation, sale or offer is carried out on behalf of such society, association or corporation by volunteers or persons employed on an annual basis for fixed wage or salary, provided that at least 10 days prior to entering the Town for soliciting or selling purposes, the person or persons involved shall register with the Town Clerk, providing their identity and proof of their nonprofit status, and advising of the time and location within the Town of their proposed activity;

- (8) a duly organized volunteer ambulance or fire company or district or an auxiliary thereof;
 - (9) the peddling of fish, fruit or farm produce by persons who produce such commodities, provided that the sale takes place from a stationary location upon property owned or leased by the seller and all other local, state and federal laws, rules and regulations have been complied with, including any licensing or health and safety requirements. This exemption shall apply only to natural persons and shall not be construed to include farmers or other persons who buy goods for resale, as well as selling their own produce, or to any helper or employee of such exempt person;
- B. Nothing contained in this section shall exempt any person from the restrictions set forth in §148-13, above.

§ 148-17. Persons engaged in interstate commerce.

- A. Anything to the contrary notwithstanding, this chapter shall not apply if its enforcement would unlawfully interfere with interstate commerce.
- B. Any person or company who solicits orders for goods, wares, merchandise or provisions for future interstate delivery to any place in the Town of North Castle shall be exempt from the payment of any fees as set forth in §148-6 of this chapter upon presentation of proper proof to the Town Clerk that said person or company is actually engaged in interstate commerce. If the Town Clerk shall determine that such person or company is actually engaged in interstate commerce and all other provisions of this chapter have been complied with, the Town Clerk shall indicate on the license that such person or company is properly registered hereunder. All other provisions of this chapter shall apply to all such persons and companies registered pursuant to this section.

§ 148-18. Enforcement.

It shall be the duty of any police officer of the Town of North Castle to require any person seen peddling or soliciting, and who is not known by such police officer to be duly licensed or registered, to produce his peddler's and solicitor's license or canvasser's registration and to enforce the provisions of this chapter against any person found violating the same.

§ 148-19. Insurance.

- A. Before any license as provided by this chapter shall be issued, the applicant shall file with the Town Clerk a certificate of insurance naming the Town of North Castle, its officers, employees, agents and assigns as the additional named insured. Said certificate of insurance shall be in a minimum amount of \$1million against any and all damages and injury to property or person by reason of, or related to, the licensee's use of public streets, sidewalks or places to vend merchandise. Said insurance shall be maintained throughout the duration of the license period, and failure to do so shall be a violation of this chapter.
- B. All certificates of insurance issued pursuant to this section shall contain a clause that 10 days' written notice of cancellation or change shall be given to the Town Clerk of the Town of North Castle.
- C. An applicant shall also submit an executed agreement to indemnify and hold harmless the Town of North Castle and its officers, employees, agents and assigns from any and all claims, actions, injuries and damages of every kind and description which may accrue to or be suffered by any person by reason of or related to the vending of merchandise by said applicant or the granting of a license to do so.

§148-20. Bond required.

- A. An application for a license shall be accompanied by a bond to the Town of North Castle, approved as to form and surety by the Town Attorney, in the penal sum of \$15,000.00 or collateral security satisfactory to the Town Attorney, conditioned for the due observance during the term of the license of any and all ordinances adopted by the Town respecting hawking, peddling and soliciting.
- B. In the case of solicitors who demand, accept or receive payments or deposits of money in advance of final delivery, such bond shall be further conditioned for making final delivery of goods, wares or merchandise ordered or for performing services in accordance with the terms of such order, or, failing therein, that the advance payment on such shall be refunded. Any person aggrieved by the action of any such licensed solicitor shall have a right of action on the bond for the recovery of money or damages, or both. Such bond shall remain in full force and effect for a period of six months after the expiration of any such license, unless sooner released by the Town Board.

§148-21. When written orders required; duplicates.

All orders taken by licensed solicitors who demand, accept or receive payment or deposit of money in advance of final delivery shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor.

§ 148-22. Revocation of license.

- A. Licenses issued under the provisions of this chapter may be revoked by the Town Clerk of the Town of North Castle after notice and hearing before the Town Clerk and the Police Chief or his designee for any of the following causes:
 - (1) Fraud, misrepresentation or false statement contained in the application for license.
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as peddler or solicitor.
 - (3) Any violation of this chapter.
 - (4) Conviction of any crime or misdemeanor involving moral turpitude.
 - (5) The accumulation of five (5) or more verified complaints made to the Police Department and / or the Town Clerk's office.
 - (6) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.
- B. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing.
- C. The Town Clerk, upon receiving information giving him or her reasonable cause to believe that the holder of any license issued hereunder has violated any provisions of this chapter or has been convicted of any violation referred to in this section or indicted or charged with or for any crime or offense, may forthwith temporarily suspend such license until a hearing is held by him or her as provided herein and the Town Clerk shall have issued his determination thereon.
- D. If the Clerk revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked under this section may not apply for a new license for a period of one (1) year from the effective date of revocation.
- E. Failure to appear at the scheduled hearing will be considered a default, and will result in the revocation of the license.

§148-23. Report of violations.

- A. Aggrieved residents may report any violation of this Chapter to the North Castle Police Department, who shall maintain records of any reported violations.
- B. The Police Department shall report to the Town Clerk in writing all complaints of violations of this local law, and the Town Clerk shall record the reports of such violations.

§ 148-24. Appeals.

Any person aggrieved by the action of the Police Department or the Town Clerk in the denial of the application for a license as provided in §148-5 of this chapter or in the decision of the Town Clerk and the Police Chief or his designee with reference to the revocation of a license as provided in §148-22 of this chapter shall have the right to appeal to the Town Board of the Town of North Castle. Such appeal shall be taken by filing, within 15 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds of such appeal. The Town Board shall set a time and place for such appeal, and notice of such appeal shall be mailed to the applicant at his last known address at least five days prior to the date set for the appeal. The decision and order of the Town Board on such appeal shall be final and conclusive.

§ 148-25. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

§ 148-26. Severability.

If any portion of this chapter shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such portion thereof shall be deemed inoperative and the balance of said chapter shall be deemed to be in full force and effect.

2. Effective Date: This Local Law shall be effective immediately upon filing of same with the Secretary of State of the State of New York.