

Town Board Minutes
Town of North Castle
Town Hall
15 Bedford Road
Armonk, New York
On
June 24, 2009

At 5:40 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 Attorney	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 Kittredge moved, seconded by Councilman Weaver, approval of the minutes of the June 10, 2009 regular meeting.

The roll call vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the minutes of the June 16, 2009 work session. Councilman Geist abstained as he was not present at the meeting.

The roll call vote was as follows:

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

Noes: None.

Abstentions: Councilman Geist

Supervisor Berman made the following announcements:

- Beginning Wednesday, July 1 and continuing through Monday, August 31, clerical departments will be observing summer hours, working 8:00 a.m. until 4:00 p.m. The Town Justice Court will continue with its usual hours and not observe summer hours.
- *Music by the Brook*, a series of five free summer concerts in Wampus Brook Park, co-sponsored by North Castle Recreation and Parks and The Small Town Theatre Company, will take place on July 5, July 18, August 2, August 16 and August 30. For more information, go the Town web site www.northcastleny.com/calendar.php
- The Studio: An Alternative Space for Contemporary Art has installed a mobile sculpture, on the front lawn of Town Hall, called "Tree and Sky" created by Cathrin Hoskinson,. The installations of the sculptures are arranged by Katie Stratis of The Studio and her contributions are appreciated.
- Con Edison wants you to put your 'green' knowledge to the test and learn how to save money on your bill by playing the company's online Power of Green game. To start testing your 'green' skills, visit www.coned.com/thepowerofgreen/game.

Supervisor Berman presented plaques to Girls and Boys Staters Stephanie Cohen, Austin Courtney Murphy, Frank Golden, Jr. and James Murphy in recognition of their participation in the program, sponsored by the American Legion Post 1097, which provides Byram Hills students the opportunity to participate in the study of governmental affairs.

Supervisor Berman announced that on June 18, 2009, she and representatives of Mt. Kisco and the Westchester Land Trust attended the closing that finalized the purchase of the Rene Dubos property, thirty acres of open space located off Baldwin Road. The purchase, which was supported by the NYS Attorney General's Office, was the result of cooperation and collaboration. North Castle and Mt. Kisco each paid \$230,000 and the Westchester Land Trust, which was granted a conservation easement over the entire premises, contributed \$15,000. Supervisor Berman said the Town is very proud of this accomplishment.

North Castle Recycling Committee (NCRC) Co-Chair Anne Curran said that NCRC's goal has been to reduce waste and improve recycling collection in all categories. She introduced April Paresi, NCRC member, who has been analyzing the Town's waste and recycling data. Displaying charts and graphs that demonstrated that recycling collection in all categories is increasing, Ms. Paresi reported that increased collections could lead to revenue through the sale of recycled paper products. Photos were projected of the six new recycle/waste bins recently donated and installed on Town fields. Ms. Curran acknowledged the Armonk Lions for their donation of the bin at Wampus Brook Park and introduced Armonk Lion Anita Cozza who thanked the community for support at the Fol-de-Rol, the Lions' main fundraiser that fuels donations for recycling and other worthy causes.

Byram Hills High School graduate, Dave Ettenson, informed the Board of his sustainability awareness efforts and recycling collection analysis of beverage containers in the high school. Based on collection data over a test period, Dave projected that over four tons of recycled plastics could be collected during a school year. He noted that increased awareness and greater use of reuseable bottles would be a small start towards creating a more sustainable environment.

North Castle Recycling Committee member, Diane Roth, stated that residents can reduce waste from home modeling by making donations of kitchen cabinets and other fixtures to Green Demolition, a Greenwich company listed on the Green Page of the Town's web site.

Deputy Town Clerk Anne Curran provided an update on Cable TV Operations, including the following points:

- Cable TV transmission was established at Town Hall in September 2008, after the expiration of the Inter-Municipal Agreement with Byram Hills School District.
- Town Board and Planning Board meetings air on the Government Access channels as well as taped concerts and lectures at the Library and a few original video segments such as the Supervisor's Budget Update and the a Report from the Administrator's Review Task Force.
- Verizon FIOS TV Franchise Agreement Status: Coverage is at 87% of households and payments of grants and franchise fees are in order. Issues to monitor include correcting mal-functioning audio feed at the Hergenhan Recreation Center auxiliary site, getting North White Plains Recreation Center auxiliary site operable, which is behind the stipulated mid-May activation date, and completion of free Verizon FIOS TV drops at government buildings.
- Cablevision Cable TV agreement status: Coverage for North White Plains homes was scheduled for June 3 in the contract and has not yet been fulfilled. It is the Town's responsibility to consider legal action for failure to adhere to terms of the agreement. Since Cablevision has promised that coverage will be provided sometime in July, 2009, that schedule will be monitored.
- Recommendation for the re-establishment of the Cable Advisory Committee to monitor franchise agreements, work on formation of cable TV policy and procedures, work on operation goals and programming considerations, and to deal with timely issues such as auditing franchise fees.

When asked by Supervisor Berman, the Town Board agreed that the Cable Advisory Committee should be re-established. Supervisor Berman said she would contact previous members and request their participation.

Supervisor Berman reviewed the progress on the proposal to join other Towns in an audit of Cablevision franchise fees by Ashpaugh & Sculco. Seven municipalities are confirmed or expected to confirm participation: Lewisboro, Bedford, Pound Ridge, Yorktown, Mount Kisco, Harrison and Somers; with North Castle's participation, the cost for the audit would be \$6,000 for

each municipality. Supervisor Berman reiterated that this firm recently conducted a Cablevision audit for several other Westchester towns that uncovered revenue from underpayment of franchise fees and returned more than \$370,000 to the group.

Deputy Town Clerk Curran provided an update on the investigation of Ashpaugh & Sculco and competitive proposals from two other New York firms, both of which work on a contingency basis. Her findings included the following:

- As a CPA firm in the state of Florida, Ashpaugh & Sculco cannot do any consulting services that involve a contingency fee. Further, they feel that working on a fee basis provides more independence and credibility in dealing with cable operators.
- A contingency fee based firm based in Buffalo, NY, said it finds miscoding of addresses as a reason that the subscriber counts are incorrect; they did not seem knowledgeable about franchise fee underpayments based on ad sales.
- A second contingency fee based firm based in Earlville, NY, had worked with several lower Westchester towns on utility audits of electric, telephone, natural gas and cable tv. Reports from three references indicated that no underpayments were realized from cable tv, though all had reported electrical overpayments from the audit of street lighting.
- The use of firms who audit various utilities cannot be compared to the depth of experience and knowledge of Ashpaugh & Sculco, a firm that specializes in cable tv audits.
- If the Town declines participation in the Ashpaugh & Sculco group audit, it will pass up the opportunity for an audit at a discounted fee.

Councilman Weaver moved, seconded by Councilman Kittredge, approval for North Castle to join the consortium and participate in the audit of cable tv franchise fees with other participating towns at a cost of \$6,000.

The roll call vote was as follows:

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

Noes: Geist.

Councilman Weaver moved, seconded by Councilman Kittredge, receipt of a letter from Frederick P. Clark Associates regarding its review of the Traffic Study and the Site Layout Plan prepared by John Meyer Consulting in connection with the proposed maintenance garage at 7 Round House Road. With regard to F.P. Clark's recommendation that the Town install a centerline on Round House Road between the intersections of Banksville Avenue and Hobby Farms, Councilman Kittredge recommended that the matter be referred to the Highway Department.

The roll call vote was as follows:

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

Noes: None.

Supervisor Berman said that the F.P. Clark review did not support the findings of the Adler Consulting traffic study.

Resident Steven O'Connor, Round House Court, said he wrote a letter in response to the F.P. Clark review. Mr. Connor said the review contained repeated references to insufficiencies in the submission by 7 Round House Road regarding traffic and related roadway activities and noted the applicant did not subsequently submit the information requested in the review. He added that the review did not contradict any of the roadway characteristic observations in the Adler traffic study which said the roads were dangerous and overburdened.

Director of Planning Kaufman said that the Planning Board will review the report and any inadequacies will be addressed.

Councilman Weaver moved, seconded by Councilman Schiliro, receipt of a proposal from F.P. Clark Associates for planning consulting services in connection with a study of land use and zoning policies for the Banksville hamlet.

The roll call vote was as follows:

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

Noes: None.

Supervisor Berman said that the original zoning study proposal submitted by F.P. Clark, which addressed two sub-areas in Banksville, had an estimated cost of \$47,000, but the project estimate would be reduced to \$42,000 if it were modified to include only the area north of Banksville Avenue.

Residents Patricia Sawyer, Gilda Gencarelli, Gregory Tertta, Michael Lehrer, Robert Schupp and others by petition, expressed opposition to the proposal and to any changes to commercial zoning in Banksville. Residents including Eric Birnbaum, Steve Gage, Diane Dyer, Nancy Birnbaum, Jerry March and Rob Silpe said they supported the zoning study but were opposed to zoning changes which would affect any existing businesses. Jeff Brown said the decision on rezoning the GB district will impact the nature of future development in the hamlet. Several residents expressed their opposition to the special use permit applications submitted for 7 Round House Road and 20 Banksville Avenue because, unlike existing businesses, these businesses would be run by owners who would not reside on the premises. Residents Denise O'Connor, Steve O'Connor, Paul Jacobs, Susan DiCicco, David Jacobs and others by petition, letters and e-mails, expressed their support of the zoning study proposal and some urged the Board to adopt the rezoning changes recommended in the 1996 Comprehensive Plan and later considered during the moratorium. Several residents also voiced concerns about vehicle and pedestrian safety and environmental issues.

Mark Miller, Veneziano & Associates, representing North Castle Landscaping & Tree Service, Inc., 7 Round House Road, recommended that the Board do what is fiscally sound and makes zoning sense. Mr. Miller said the F.P. Clark proposal did not include a SEQR review which would involve a costly study for the Town. He urged the Board not to accept the proposal.

P. Daniel Hollis, Shamberg Marwell Davis & Hollis, representing the owners of 20 Banksville Avenue, expressed his views that zoning changes would not advance any substantial government interest and there were safeguards in the Town laws to protect the property rights of owners. Mr. Hollis echoed Mr. Miller's comments that the SEQR review would be a significant expense for the Town, and added that the properties in question would not be developed as residential due to lack of market interest and water and sewer accessibility.

When Jerry March asked if previous environmental studies could be used, Town Attorney Baroni replied if the decision is made for the proposal to go forward, the studies should be current.

Councilman Geist said that the study should be done now to fulfill the promise made to the residents of Banksville in 2006 when the Board asked the Planning Board to do the study.

Councilman Geist moved, seconded by Supervisor Berman, acceptance of the proposal from F.P. Clark for the Banksville Planning and Zoning Study with the redaction of the second study area. Supervisor Berman said that the proposal addressed unfinished business of land use legislation and zoning issues which were referred to the Planning Board for further review and now it was time to do that work.

The roll call vote was as follows:

Ayes: Councilman Geist, Supervisor Berman.

Noes: Councilmen Schiliro, Kittredge, Weaver

Councilman Weaver said he believes in the special use permit process and the applicants must meet specific requirements. He added that the issue was studied in the past and there are zoning laws to protect property owners.

Councilman Schiliro thanked everyone for making their voices heard. Mr. Schiliro said that the proposals for specific applications are not before the Board at this time. He said he reviewed the

findings of the 2006 report, was satisfied with its findings and thought that any additional study would contain similar findings. He said he did not think conducting another study was a prudent use of the Town's and taxpayers' money.

Authorization for the Supervisor to sign the NYS Smart Growth Grant application was not considered since the proposal for the Banksville Zoning Study, which the grant would help fund, was not approved by the Board.

Mark Miller, Veneziano & Associates, representing Archer Stables, 35-61 Bedford Banksville Road, reviewed the application for amended special permit approval and site plan approval for Archer Stables (formerly Rose Hill Farm). Mr. Miller said that the application, which was previously submitted to the Town Board and subsequently withdrawn on February 5, 2009, does not call for changes in the conditions imposed in the existing site plan approval resolution and special permit resolution. He requested the Town Board commence the SEQR process and refer the special use permit application to the Planning Board. The site plan application has already been submitted to the Planning Board.

Councilman Geist said that submission to the Town Board was incomplete because it contained only a letter and no application. Mr. Geist said when the special use application was previously submitted there were issues regarding non-compliance with the existing special use permit conditions which prohibited commercialization of the property. He questioned whether any violations currently exist and asked that the applicant provide copies of waivers from riders and lists of veterinarians who service the horses. Town Attorney Baroni suggested that the original submission be redistributed to the Board. Mr. Miller said he would provide responses to the questions raised by Mr. Geist and in Director of Planning Kaufman's February 20, 2009 memo.

Councilman Geist moved, seconded by Councilman Kittredge, receipt of a letter from Veneziano & Associates regarding an application for amended special use permit approval for Archer Stables.

The roll call 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 from Jarden Westchester Triathlon to use some local streets in North Castle for their annual race on September 27, 2009.

The roll call vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, receipt of a letter from the Planning Board regarding a local law to amend Sections 213-32 and 213-41 so that site plan approvals and special use permits approvals will not expire if a valid building permit exists, and further moved the scheduling of a public hearing for July 8, 2009.

The roll call vote was as follows:

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

Noes: None.

John reviewed the Conservation Board's report on a proposal to hunt white-tailed deer in North Castle Town parks. Mr. Fava said that the Town Board had asked the Conservation Board to investigate the deer hunting program instituted in Pound Ridge to control the deer population. He said that Pound Ridge had found its police department's involvement to be very important in the development of their program, but said that the North Castle Police Department does not have a great interest in managing the program. Mr. Fava also provided information from a Westchester County study of the 4,000 acre Pound Ridge Reservation which found there were 60 deer per square mile, rather than the five to ten deer per square mile which would allow forest regeneration. Rod Christie, Executive Director of the Mianus River Gorge Preserve and Conservation Board members looked at three Town parks large enough to accommodate a deer hunting program: 96 acre Betsy Sluder Nature Preserve, 92 acre Cat Rocks Park and 18 acre

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Cedar Hill Park. It was determined that Sluder Preserve is too close to populated areas. Of the three options considered by the Conservation Board to control the deer population and encourage forest regeneration, the only viable one seemed to be to encourage private landowners to seek qualified bow hunters following NYSDEC guidelines, permit procedures and monitoring. It was also recommended that the Public Education aspect of the Westchester County 2008 Report be adopted. Supervisor Berman recommended that the Board move receipt of the report and schedule further discussion at another time.

Councilman Weaver moved, seconded by Councilman Schiliro, receipt of the report from the Conservation Board regarding hunting white-tailed deer in North Castle town parks.

The roll call vote was as follows:

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

Noes: None.

Resident Sue Shimer expressed concerns about the consequences of hunting in town parks and on private properties of over fifty acres.

Councilman Kittredge moved, seconded by Councilman Geist, approval of a Holiday Display permit application from Asad Jilani to place a crescent and star near the gazebo at Wampus Brook Park during the holiday season.

The roll call vote was as follows:

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

Noes: None.

Councilman Geist moved, seconded by Councilman Kittredge, receipt of a mortgage tax update for May 2009 from Comptroller Dawn Donovan. The projection for May 2009 is \$25,000.

The roll call vote was as follows:

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

Noes: None.

Upon the recommendation of Superintendent Bruce Barnard, Councilman Geist moved, seconded by Councilman Kittredge, approval of the bid award for the North Castle Recreation 2009 Teen Travel Bus to MTC Limousine and Corporate Coach, the sole bidder, in the amount of \$11,200.

The roll call vote was as follows:

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

Noes: None.

Pursuant to a memo from Superintendent Barnard, Councilman Geist moved, seconded by Councilman Weaver, acceptance of the donation of three baseball scoreboards from the Armonk Baseball League, in the amount totaling approximately \$10,300. Two scoreboards will be placed in Community Park and one at Clark Field.

The roll call vote was as follows:

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

Noes: None.

Councilman Geist moved, seconded by Councilman Kittredge, approval of the request of Superintendent Barnard to erect a sign at the corner of Bedford Road and Maple Avenue to publicize the free summer concert series *Music by the Brook*, co-sponsored by the Town and The Small Town Theatre, beginning July 5 and ending August 30, 2009. The sign may remain for the duration of the series.

The roll call vote was as follows:

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

Noes: None.

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Councilman Geist moved, seconded by Councilman Weaver, approval of the request of General Foreman Useted for the release of highway bonds to George Nagle, Permit #831, in the amount of \$500 and R. Eisenhower, Permit #852, in the amount of \$500; and further moved approval to reinstate \$750 of the \$50,000 bond provided by Con Edison, for Permit #692; and approval to reinstate \$4,500 of the \$50,000 bond provided by Cablevision, for Permit #s 666, 674, 687, 689, 691 and 720.

The roll call 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 New York City Department of Environmental Protection regarding the local consultant period for Land Acquisition Projects for parcels #5359 (Timber Ridge property) and #7041 (Half Mile Road property) which have been purchased by New York City for water supply protection.

The roll call vote was as follows:

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

Noes: None.

Councilman Geist moved, seconded by Councilman Kittredge, authorization for Comptroller Donovan to pay Littler Mendelson P.C. for May 2009 legal services in the amount of \$5,667.75.

The roll call vote was as follows:

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

Noes: None.

Councilman Schiliro moved, seconded by Councilman Geist, receipt of a letter from Hudson River Valley Greenway to recognize North Castle for becoming a Climate Smart Community.

The roll call vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Geist, that the Supervisor be, and hereby is, authorized to make the following budget transfers and amendment:

A 1989.0444.034 Unclass.-Prof.Svc/-Gas/GAS	500.	A3120.0411 Police – Supplies	2,335.
A 3120.0441 Police – Prof. Seminars	1,835.		
Subtotal	2,335.		2,335.

Budget Amendments

A 1000.2705.4 DARE – Donations	2,065	A2989.0411 DARE – Supplies	2,065.
Subtotal	2,065.		2,065.
Total	4,400.		4,400.

The roll call vote was as follows:

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

Noes: None.

Councilman Geist moved, seconded by Councilman Kittredge, authorization for the Supervisor to sign an agreement with the Armonk Baseball League to lease a part of the former Recreation Building at 85 Cox Avenue for a term commencing July 1, 2009 and ending on July 1, 2011.

The roll call vote was as follows:

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

Noes: None.

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Councilman Kittredge moved, seconded by Councilman Geist, authorization for the Supervisor to sign the lease agreement with Fleetwood Leasing, LLC, for an 8-Channel Analog Myracle Recorder for use by the Police Department.

The roll call vote was as follows:

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

Noes: None.

Pursuant to the request of Superintendent Barnard, Councilman Geist moved, seconded by Councilman Schiliro, authorization for Comptroller Donovan to make payment No. 7 in the amount of \$12,917.95 to DeRosa Tennis, Inc., for base contract items in connection with the Lombardi Park road and parking lot improvement capital project.

The roll call vote was as follows:

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

Noes: None.

The Town Board audited and approved payments totaling \$858,823.75 as indicated on Warrant #11.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 10:45 p.m. in memory of Lorie Demeshulam; Mary Junker; Sharon Smalley, Colleen Gallagher's sister; John Moore's wife, Dorothy; and Anne Lunde's husband, Rolf.

Ann Leber, Town Clerk

Dated: July 7, 2009

PUBLIC HEARING

June 24, 2009

At 7:40 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 27, 2009 at 7:30 p.m., or as soon thereafter, at North Castle Town Hall, 15 Bedford Road, Armonk, New York 10504 to consider the adoption of a Local Law to amend Chapter 106 entitled "Filming" of the Code of the Town of North Castle.

By Order of the Town Board
Ann Leber, Town Clerk

Dated: June 11, 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.

Supervisor Berman said that two slight changes to the Filming law have been proposed and asked Town Clerk Leber to explain the changes. Ms. Leber said the current law does not require the applicant to conform to the licensing requirements if a fee is not paid for the use of property for filming, nor does it provide for a waiver of requirements and limitations if they would pose an unreasonable burden on the applicant. The proposed law would require all applicants to conform to the law and would allow the Board to authorize appropriate waivers.

Resident Jeff Brown, Bedford Banksville Road, said as a producer he finds the advertising agency fees onerous and thought they would discourage these companies from filming in Town. Mr. Brown urged the Board to revisit the fees and provided information about the fees in other nearby towns which charge either an annual or per production fee rather than a daily fee. He added that smaller production companies would patronize community businesses.

Supervisor Berman read aloud the fee structure which includes no fees for students and low fees for public service, teaching and not-for profit productions.

Mr. Brown questioned the difference between a party and an enclosed film production crew on private property. Supervisor Berman said if the proposed changes were adopted, the Town could use the waiver option in certain situations.

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 Weaver, that the Public Hearing be closed at 7:55 p.m.

The roll call vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, the adoption of Local Law 7 of the year 2009 to amend Chapter 106 entitled "Filming" 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: July 6, 2009

TOWN OF NORTH CASTLE

Local Law No. ____ for the Year 2009

A Local Law to Amend Chapter 106 entitled Filming 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 106 entitled Filming is hereby amended as follows:

§106-1. Findings; purpose.

- A. The Town Board finds that significant filming, videotaping and recording on private and public property has been occurring in the Town of North Castle, that is creating hardship, inconvenience, danger and discomfort to large numbers of citizens and residents of the Town of North Castle because of the inconvenience and disruption of traffic placed on the public streets and private neighborhoods.
- B. By reason of the foregoing, the Town Board finds that the health, welfare and safety will be served by adoption of a local law providing a means of regulating, by license, the undertaking of any filming, videotaping or recording, in a commercial manner, on private or public property.
- C. The Town Board does hereby ordain and enact this chapter to accomplish the aforesaid purposes.

§106-2. License required.

No movie, documentary or regular television program, commercial or similar presentation or any portion thereof shall be filmed, videotaped, recorded or otherwise made on any private or public property within the Town of North Castle whether or not a fee is to be paid or anything of value changes hands for such use of the property unless the owner or tenant in control of the property or the Supervisor of the Town of North Castle for public property, hereinafter sometimes referred to as the “applicant(s),” first makes an application to and obtains a license from the North Castle Town Board for the filming, videotaping or recording.

§106-3. License applications.

- A. Applications may be submitted to the Town Board in person or by mail and must contain at least the following information:
 - (1) The name of the applicant.
 - (2) The location of the property where filming, videotaping, etc. is to take place.
 - (3) The dates and times when said filming, videotaping, etc. is to take place.
 - (4) Whether the applicant is the owner or tenant in possession of the property; and if the applicant is not the owner, the name of the owner of the property.
 - (5) The name of the person or entity the applicant wishes to allow to film, videotape, etc.

- B. The applicant shall notify and provide all contiguous or adjacent property owners to the property being utilized with a copy of its application, use plan and all supporting documents by certified mail, return receipt requested, simultaneously with its filing with the Town Board.
- C. The applicant shall submit a use plan showing the days and hours of proposed operation, parking plans and any mitigating measures proposed and the name, local address and local telephone number of a person who will be available 24 hours a day during the activity and who shall have control of and responsibility for the direction of all participants in the permitted activity and for the property for which the activity is permitted.
- D. The Board shall seek the advice of the Chief of Police, Building Inspector, the Transportation Supervisor for the applicable School District and the Superintendent of Highways in reviewing such plans.
- E. The Board shall attach conditions and safeguards ensuring the orderly conduct of the activity and the minimization of impact of such use and shall specify the duration and hours of operation of such activity.
- F. The Town Board may require the applicant to post reasonable bond to assure adherence to the permit conditions set forth. The Board may further require an applicant to furnish the town with a hold harmless and indemnification agreement, together with a certificate of insurance relieving the town from any potential liability by virtue of the applicant's activities. The Town Board may further require as a condition of any license that the applicant utilize the services of a Town of North Castle police officer or officers at the customary rate set by the Police Department from time to time for such services.
- G. The Chief of Police shall have the power to cause the conditions set by any special license granted under this section to be enforced.
- H. Site plan approval by the Planning Board is not required for licenses issued under this section.

§106-4. License fee.

Each applicant shall pay a fee to the Town of North Castle set in a fee schedule determined by the Town Board as attached hereto for filming, videotaping or recording on private property per day and a fee set in a fee schedule determined by the Town Board per day for any filming, videotaping or recording on public property.

§106-5. Limitations of activities.

- A. Unless the Town Board provides otherwise by resolution, filming, recording, videotaping, and similar activities for which a license is required under §106-2 above shall in no event be conducted at the same location (i.e., in the same building or at the same street address) more than any portion of seven calendar days within any twelve-month period.
- B. Unless the Town Board provides otherwise by resolution, no applicant shall permit any filming, recording, videotaping, and similar activities for which a license has been issued to be conducted prior to 8:00 a.m. or after 7:00 p.m. Monday - Friday only.
- C. Unless the Town Board provides otherwise by resolution, no applicant shall permit equipment used in connection with such filming, including but not limited to, lights and generators, etc., to be operated at the location described in §106-3A(2) prior to 8:00 a.m. or after 7:00 p.m. Monday - Friday only. No applicant shall permit equipment to be used in connection with the filming, videotaping,

and similar activities nor accessory trailers, kitchens and facilities to be set up outdoors at the location prior to 8:00 a.m., and all such equipment shall be removed from outdoors by 7:00 p.m. that evening.

§106-6. Penalties for offenses.

- A. Any person, persons, corporation, company, group or other entity of any kind who or which fails to obtain the license required herein or otherwise violates any provision of this chapter shall be guilty of an offense which shall be punishable by a fine of not more than \$1,000 per day per offense or by imprisonment not exceeding 15 days, or by both such fine and imprisonment.
- B. The imposition of such fine shall not be the Town’s exclusive remedy in the event of a violation of this chapter. The Town may pursue any and all other legal remedies available to it in connection with any violation of this chapter.

§106-7. Previous violations.

Notwithstanding any of the foregoing, no applicant who has been previously convicted of a violation of this chapter shall be granted a permit hereunder for a period of 18 months from the date of such conviction.

§106-8. Waiver

The Town Board may authorize a waiver of any of the requirements and/or limitations of this chapter whenever it determines that strict compliance with such limitations or requirements will pose an unreasonable burden upon the applicant and that such license may be issued without endangering the public’s health, safety or welfare.

- 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.

DAILY FEE SCHEDULE

	Student	Public Service / Teaching / Not-for-Profit	Agency Advertising	Full Length Feature Film
On Public Property	0	\$100	\$2,500	\$5,000
On Private Property	0	\$50	\$1,250	\$2,500

Note: All fees are per day and payable in advance.

PUBLIC HEARING

June 24, 2009

At 7:55 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 June 24, 2009 at 7:30 p.m., or as soon thereafter, at North Castle Town Hall, 15 Bedford Road, Armonk, New York for the purpose of considering the NYCDEP Remediation Plan for Kaysal Court for Wetland/SWPPP/Flood Plain Activity Permit/Tree Removal Application Review.

By Order of the Town Board
Ann Leber, Town Clerk

Dated: June 12, 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.

Memos from Kellard Sessions Consulting, P.C. dated April 3, 2009, and May 22, 2009, and a memo from the Conservation Board dated June 18, 2009, were marked Exhibit "D" for the record.

Supervisor Berman explained that the NYCDEP is proposing wetland creation and buffer enhancements in North Castle as part of a remediation plan for the construction of an ultraviolet light disinfection facility in Mt. Pleasant. A portion of the wetland mitigation for this project has been proposed at two sites north and south of Kaysal Court. In response to objections regarding proposed land disturbance, tree removal and transportation impacts, the project has been revised to avoid the disturbance of about one acre of forested lands and steep slopes and place 8,000 cubic yards of clean fill on the adjacent DEP parcel; to include more plants, shrubs, ground cover and trees than previously proposed; and to repair about 600 linear feet on Old Route 22 upon completion of the project.

With regard to the suggestion of the Conservation Board that both parcels be used to provide access to open space and trails, Ryan Coyne of Kellard Sessions said the applicant has indicated that the issuance of a Revocable Land Use Permit will be required.

Councilman Geist said that the application did not appear complete as the Board does not have one document which provides all the conditions.

Mr. Coyne said that he would work with Town Attorney Baroni to develop a resolution which will include all the conditions for the Board's consideration.

Supervisor Berman recommended that the Public Hearing be adjourned until the next Board meeting.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Geist moved, seconded by Councilman Schiliro, that the Public Hearing be adjourned at 8:00 p.m.

The roll call vote was as follows:

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

Noes: None.

Ann Leber, Town Clerk

Dated: July 7, 2009