

Town Board Minutes  
Town of North Castle  
15 Bedford Road  
Armonk, New York 10504  
on  
February 25, 2009

Supervisor Berman called the meeting to order at 5:30 p.m. 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. The Executive Session was closed at 7:25 p.m.

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

Councilman Kittredge moved, seconded by Councilman Geist, approval of the minutes of the February 11, 2009 regular meeting.

The roll call vote was as follows:

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

Noes: None.

Supervisor Berman made the following announcements:

- Congratulations to North Castle's Receiver of Taxes Patricia Colombo who is the newly elected President of the Westchester Receivers and Collectors Association. Patty was elected to a two-year term at a meeting on Monday, February 23<sup>rd</sup>.
- A Westchester County anti-idling law went into effect on February 10, 2009. The law applies to all vehicles operating within the County and restricts engine idling to three minutes. Police, fire and emergency vehicles are exempted.
- Between March 2 and March 13, a not-for-profit group, Citizens Campaign for the Environment, will conduct home-to-home visits throughout North Castle between the hours of 4:00pm and 9:00pm Monday through Friday. The campaign will include petitioning, letter-writing, and fundraising. North Castle's law allows soliciting between the hours of 9am and 7pm. CCE has told Town Clerk Leber that there will be no cold calls after 7pm and that they will make house calls between 7pm and 9pm only if invited by the resident to return during those hours.  
If you experience any menacing or threatening behavior by any organization, please report the incident to Town Clerk Leber during business hours and to our Police Department after business hours.

Councilman Kittredge moved, seconded by Councilman Geist, the appointment of Stacey Silpe to the Library Board of Trustees for a term to expire December 31, 2011.

The roll call vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a letter from Ward Carpenter Engineers Inc. regarding survey services for sewer improvements in Quarry Heights. The letter stated that the company will be in the field finishing work on their contract and after completing the survey mapping will prepare a metes and bounds description of the 15-foot wide sewer easement for each of the fifty-seven parcels.

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The roll call vote was as follows:

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

Noes: None.

Recycling Committee Co-chairman Anne Curran and committee member Diane Roth described the progress being made in North Castle with regard to the recycling program. Ms. Curran reported that:

- Residents who are not recycling will receive a letter notifying them that their refuse will not be picked up if it contains recyclable materials. Fines will be issued to repeat offenders.
- Supt. Barnard has chosen permanent recycling receptacles for the parks and fields. The committee is soliciting civic associations for additional donations to purchase the bins.
- Decals will identify the receptacles and the donors.
- Westchester County will be celebrating Earth Day at the Kensico Dam on April 19.

Ms. Roth described a committee initiative “Zero Waste Day” to be held on April 25 behind Town Hall. The following items will be accepted for recycling:

- Electronic waste (anything with a plug)
- Paper for shredding
- Furniture (not too large and in good condition) to be given to families in need
- Bicycles
- Women’s clothes (nearly new and cleaned) to be donated to “Dress for Success” which supplies clothes for job interviews.

Councilman Kittredge announced that Earth Day in North Castle will take place on April 25.

Councilman Kittredge moved, seconded by Councilman Geist, receipt of a memo from Kellard Sessions Consulting, PC, and applications for wetlands, tree removal, erosion and sediment control and fill permits from NYC Department of Environmental Protection in connection with the 1.5 acre Whippoorwill Stream Stabilization project, located in the Towns of North Castle and Mt. Pleasant. A PowerPoint presentation accompanied the project description given by DEP consultants from HDR Architecture and Engineering, PC. As explained in the Kellard Sessions memo “the DEP is proposing stream stabilization and buffer enhancements as part of a long-term stormwater treatment project at Whippoorwill Stream” in response to high turbidity and coliform levels.

Using a PowerPoint presentation, representatives of the NYCDEP and its consultant, HDR Engineering, explained the history and purpose of the Whippoorwill Stream stabilization project including the following points:

- Since the 1990s NYCDEP has prioritized protection of the Kensico Watershed
- Ninety percent of water bound for NYC passes through the Kensico Reservoir
- Based on storm water studies of the Watershed, stream stabilization and buffer enhancements for Whippoorwill Stream have been recommended to improve storm water flows and reduce discharges of pollutants, thereby improving water quality
- Project proposes construction of a variety of in-stream rock structures to improve stabilization and provide grade control
- Project area is located along both sides of Whippoorwill Stream, the boundary between North Castle and Mount Pleasant
- The project area located in the Town of North Castle includes disturbance to approximately .54 acre on eastern side of the stream
- Access is proposed from the south, via a 16-foot wide temporary access road off of Nannyhagen Road, requiring the removal of 70 trees
- A proposed landscape restoration plan will provide trees, shrubs, seeding and temporary deer fencing
- Anticipated construction schedule is between July and September, 2009 to avoid trout spawning activity which starts in October
- NYCDEP will be the lead agency and coordinate the SEQR approval process

Councilman Weaver suggested that the stream restoration be considered along Whippoorwill Crossing where dramatic erosion is visible along the stream. In response to Mr. Weaver’s inquiry

about deer fencing, John Roebig, HDR, replied that the fencing is 7.5 feet high, with black poles and mesh and constructed in small sections so it will not impact wildlife movement.

The Town Board and various residents expressed their concerns about:

- The extent of the impact on local roads from construction traffic
- Loss of large pine trees along Nannyhagen Road and the type and size of replacement trees
- Repair of any damage once the project is complete
- Traffic control near the construction site
- The visual affect of stabilization construction in the stream
- The staging area

Ryan Coyne of Kellard Sessions Consulting asked for more detail on the following items:

- Construction traffic impacts
- Visual impacts
- Replanting plan

HDR said it would supply answers to the questions raised tonight by the end of next week.

Councilman Kittredge moved, seconded by Councilman Weaver, that a public hearing on the Whippoorwill Stream stabilization project be scheduled for March 25, 2009. Councilman Geist suggested that a representative of Mt. Pleasant be invited to attend the public hearing.

The roll call vote was as follows:

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

Noes: None.

Prior to the Board's considering acceptance of the Stipulation of Settlement in litigation involving Seven Springs, LLC, Supervisor Berman asked Town Attorney Baroni to review the events leading up to the settlement. Mr. Baroni explained that since last spring the Town has been engaged in settlement discussions with Seven Springs, LLC, on two pending actions. These discussions culminated in the settlement document in which Seven Springs agrees to discontinue both actions if the Town:

- Does not contest that Seven Springs, LLC, has easement rights over Oregon Road as shown in the title report
- Supports the use of Oregon Road as a gated private road
- Allows Seven Springs, LLC, to apply for subdivision of the North Castle property if the applicant gains legal right to use Oregon Road
- Will recommend to the Lead Agency that Seven Springs, LLC, be allowed to use the co-lead agency scoping document from the prior proposal for subdivision review
- Will recommend to the Lead Agency that Seven Springs, LLC, be allowed to use all other documents amassed in earlier applications in connection with the new DEIS
- Will continue to work with Bedford for a unified development of the property
- Issues a joint press release with Seven Springs, LLC, announcing the settlement

In response to concerns expressed by members of the audience that, prior to the meeting, the public had not been privy to the specific terms of the settlement, Mr. Baroni read aloud the entire document. Residents Kerri Kazak, Amy Fenno and others criticized the Town Board's actions and alleged broken promises with regard to the Seven Springs property and Oregon Road and expressed their dissatisfaction with the Town's agreeing to the settlement. Mr. Baroni pointed out that North Castle became involved in the litigation because it was alleged that the Town had not properly closed Oregon Road. The balance of the litigation focuses on the Nature Conservancy, which owns the roadbed, to determine if the plaintiff has private development rights. This is a dispute between property owners; North Castle is a nominal defendant as it does not own the roadbed. The Town has chosen to opt out of the litigation. While the money damage action may be successfully defended, the potential impact on the Town's bond ratings, cost of insurance premiums and cost of litigation, already well into six figures, would be many times that. The Town Board must look at the Town as a whole. Oregon Road has never been North Castle property; it has always been the property of the Nature Conservancy. It is in the Town's best interests to let the litigation proceed without the Town's being a part of it. The application will still have to go through a rigorous review process.

Supervisor Berman said that promises had been made initially by some members of past and the current Town Board to support the residents in their battle against opening Oregon Road. Ms. Berman continued, saying that the Board members have changed their minds based on the potential cost of the action; the change in the economy; the realization that the Town does not own the property yet is an active participant in the case. Councilman Kittredge expressed her hope that Oregon Road will be used as an emergency secondary access. Councilman Geist added that the Board has had to rethink its promises. It's no longer in the Town's best interests to pursue this matter. Councilman Weaver refuted residents' accusations that the Board is acting out of fear but out of recognition of the reality that if the Nature Conservancy loses the lawsuit, there is nothing the Town can do. Councilman Schiliro agreed, saying that to extricate the Town from the lawsuit is the prudent thing to do.

Councilman Geist moved, seconded by Councilman Kittredge, that the Supervisor be authorized to sign the Stipulation of Settlement in litigation involving Seven Springs, LLC, Index 9130/2006 and 5484/2008.

The roll call vote was as follows:

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

Noes: None.

Supervisor Berman then made the following statement:

"As many of you know, Donald Trump brought us into these lawsuits even though they are about property owned by the Nature Conservancy. There are two lawsuits. The first seeks to enforce his claim that he is entitled to access over the Nature Conservancy's land for the proposed development of his Seven Springs property. He named the Nature Conservancy, two nearby homeowners, and North Castle as defendants in that case. The second lawsuit is Trump's claim for \$300 million in damages plus another \$300 million in punitive damages against North Castle for allegedly preventing development by putting a chain across the closed Oregon Road access to Seven Springs.

"North Castle did not initiate this litigation and wants no part of it. The real players here are the developer, Mr. Trump, and the landowner, The Nature Conservancy. In my view, our involuntary involvement is a distraction from the real issues and is costing the Town unnecessary and undeserved time, expense and aggravation.

"Mr. Trump has now offered to settle both cases with North Castle. He will dismiss the Town as a defendant in the action for access to Seven Springs, and he will dismiss the damages lawsuit against North Castle in its entirety. This offer makes sense and must be accepted. The Nature Conservancy, as the real party in interest, will remain in the access lawsuit, and Mr. Trump can continue to pursue his claim against The Nature Conservancy. And we can continue with other Town business without the costly distraction of this unwanted litigation.

"While it is pure speculation at this point whether Mr. Trump will be successful in his claim against the Nature Conservancy and will eventually be able to build homes on the Seven Springs property, we must recognize that tax revenues from such development would benefit the Town. Also, thoughts from several years ago that the Seven Springs property could be preserved are no longer realistic. Plans to develop the Bedford portion of Seven Springs are progressing through the Bedford approvals process with the approval of Mt. Kisco. Accordingly, we will agree, as proposed in the settlement offer, not to oppose Trump's development of the North Castle portion of Seven Springs."

Councilman Geist moved, seconded by Councilman Kittredge, authorization for the Supervisor to sign a Stipulation of Settlement in litigation involving Seven Spring, LLC, Index 9130/2006 and 5484/2008.

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, receipt of a mortgage tax update from Comptroller Donovan. The projection for January 2009 is \$24,000, the lowest for a month since 2005.

The roll call vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Kittredge, authorization for Comptroller Donovan to release the 2008 retainage to Suburban Carting Co. in the amount of \$60,959.20.

The roll call vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Kittredge, that the discussion regarding expanding the role of the Residential Projects Review Committee and streamlining the Planning Board residential review process be tabled. Town Clerk Leber was asked to schedule a Work Session.

The roll call vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Kittredge, receipt of an e-mail from Housing Board Chairman Barbara DiGiacinto requesting Town Board input on the Housing Board's recommendations on fees and cost saving measures. Since Mrs. DiGiacinto was not able to attend the meeting, the matter was tabled to the March 11, 2009 meeting.

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 franchise fee payment from Verizon for the fourth quarter of 2008 in the amount of \$7,670.90.

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 memo from Superintendent Bruce Barnard regarding a donation from the Armonk Lions Club, in the amount of \$1,095.00, to be used for two camp scholarships for the summer of 2009.

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 Workers Compensation Report for Michael Giaccio, Highway Department.

The roll call vote was as follows:

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

Noes: None.

Councilman Geist moved, seconded by Councilman Schiliro, approval of the request for Richard Fon and Michael Cromwell to attend the NYSBOC Training Conference on March 9 – 11, 2009 in Rye Brook.

The roll call vote was as follows:

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

Noes: None.

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At the request of resident Tony Deluca, Town Clerk Leber read aloud his letter regarding the collection of refuse from Main Street in Armonk.

Tony Futia commended the Town Board and Town Attorney Baroni for “doing the right thing for North Castle” with regard to the Seven Springs, LLC, lawsuit.

The Town Board audited and approved payments totaling \$436,199.10 as indicated on Warrant #3.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 10:45 p.m. in memory of former resident and chief of the Armonk Fire Department, Glen Zavras.

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Ann Leber, Town Clerk

Dated: March 10, 2009