

Town Board Minutes  
Town of North Castle  
Hergenhan Recreation Center  
40 Maple Avenue  
Armonk, New York  
on  
September 9, 2009

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

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

Councilman Geist was absent.

The meeting was immediately adjourned into Executive Session, which was then closed at 7:25 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 regular meeting of August 12 and the Special Meetings of August 13, August 18 and August 19.

The roll vote was as follows:

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

Noes: None.

The minutes of the Public Hearing which commenced at 7:42 p.m. follow at the end of these minutes.

Supervisor Berman made the following announcements:

- There will be a memorial service on Friday, September 11 for those who died in the September 11<sup>th</sup> attacks.
- Members of the Armonk Chamber of Commerce are sponsoring the annual Sidewalk Sale on September 12.
- Per the contractor and the Region 8 office of NYSDOT, there have been unforeseen delays to the schedule for the repair work on Route 22 which is now scheduled to begin the week of September 8<sup>th</sup>.
- Budget 2010 Work Sessions are scheduled on September 17, September 22 and October 1, from 8:30 a.m. to 10:30 a.m. at the Hergenhan Recreation Center. If more discussion time is needed, the Board will schedule other dates.
- September is National Emergency Preparedness Month. North Castle Citizen Corps Council (NC4) is sponsoring a program entitled "Emergency and Disaster Preparedness: What Every North Castle Resident Needs to Know" on September 10<sup>th</sup>. Brochures created by the Department of Homeland Security which describe how best to be prepared in time of emergency will be available at Town Hall, local libraries, and other locations.
- A transportation referendum will take place on October 6th at H.C. Crittenden Middle School from 6:30 a.m. to 9:00 p.m. A portion of the project is for a wash bay that will be shared by the Byram Hills School District and the Town of North Castle.
- An update was provided by the Westchester County Department of Emergency Services and the Department of Health on the County's H1N1 Task Force planning efforts. Guidelines and checklists which have been developed so that critical infrastructure services have a plan for continued operation in the event of a widespread impact of the Swine Flu virus will be forthcoming.
- Councilman Schiliro urged residents to have their children take the bus to school and not to allow their cars to idle if they drive their children to and from bus stops.

Supervisor Berman read the following statement regarding cost-saving items on the agenda:

“Before we begin the regular business of this meeting, I want to point out several items coming up on our agenda that reflect many months of hard work by this Town Board to find cost-savings. We will be considering an approval of a Request for Proposals to operate an organic recycling facility in order to replace our current leaf-grinding arrangement which costs us approximately \$150,000 or more annually. We will also be considering a proposal to rent two compactor trucks for our highway department to use to pick up bagged leaves. And we will be discussing replacing leaf vacuuming with picking up bagged leaves—a conversation that we had with our residents last year.

“At the end of the meeting we have several Memoranda of Agreement with various unions on a voluntary retirement incentive and a medical buy-out. This is the result of negotiations with the union representatives during the spring and summer. We have been working hard to reduce costs and our workforce without having to resort to further layoffs and furloughs. We prefer to avoid layoffs and furloughs, if possible; but we are not certain yet if our efforts will be sufficient to accomplish that. Much will depend on how many employees will take the medical buy-outs and the retirement incentives.”

With regard to the New York State Supreme Court decision dismissing the Town from the litigation with Seven Springs, LLC, Town Attorney Baroni read the following statement from the order of Judge Francis A. Nicolai:

“The Town should not be forced to continue costly litigation in which it has no stake; the road was properly closed in 1990. With respect to discovery, the non-settling defendants have non-party subpoena and FOIL at their disposal. The Town has complied with its discovery obligation; no additional information is available.”

Supervisor Berman said that the dispute remains between the plaintiff, Seven Springs, and the defendants, The Nature Conservancy and the neighboring property owners. Ms. Berman added that the litigation was initiated by Mr. Trump, not by the Town.

When resident Sue Shimer asked if the Town is still required to cooperate with Mr. Trump as stated in the settlement agreement, Mr. Baroni responded that the Town must do so because Seven Springs has agreed to discontinue actions in amounts totaling six million dollars against the Town.

Resident Kerri Lutz inquired about the amount of the Town’s legal fees for the litigation and why the Town became involved in it. Mr. Baroni said the amount was approximately \$140,000 and reviewed the events regarding the litigation. He said the Town had moved for a summary judgment in 2006, but the decision was reversed and the Town subsequently engaged in settlement discussions with Seven Springs.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a memo from Town Attorney Baroni and a copy of the order from the New York State Supreme Court which officially dismissed the Town from the Seven Springs litigation.

The roll vote was as follows:

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

Noes: None.

Supervisor Berman read the following statement regarding the leaf pick-up discussion:

“Tonight we are having another discussion about our leaf pick-up program. Because we recognize that vacuuming leaves is a significant service that most of our residents use, we raised this question at our September 10, 2008 meeting. Leaf pick-up was also on our August 13 2008 agenda during which Highway General Foreman, Craig Useted, gave us a report comparing leaf removal estimates for vacuuming leaves versus bagging leaves. Craig will be giving a different report in a few minutes. Before he does, I would like to give some background to his presentation.

“To date, almost all the reduced expenses that we have imposed are within the administrative organization and have had impact on the employees. The only impacts on the public have been alternate week recycling and the Monday night closing of the library in Armonk.

“Our present leaf pick up program is an unusual luxury. Most municipalities in the area do not vacuum leaves. Several of the Towns to the north of us do not vacuum leaves or even offer any pick-up service. Bedford vacuums only for properties of 1 acre or less. Pound Ridge, Somers, and Lewisboro offer no leaf pick-up. North Salem picks up bags limited to 30 gallon size and will pick up only 20 bags per month per residence. New Castle picks up only bagged leaves, and their garbage company provides this service. Mt. Pleasant vacuums leaves but limits its stay to 15 minutes per household. White Plains has recently announced that they will be replacing their vacuumed leaf service with bagged leaf service.

“In spite of our requests over the past two years for people to reduce the volume of leaves that they put out on the curbs, the volume has increased. Clearly a simple request for cooperation has not worked.

“Unfortunately, this luxury is very expensive, takes up a lot of employee time, and negatively impacts the environment.

“The Town Board feels that it is necessary to consider whether we can justify continuing the program in its present form or whether it would be in the Town's best interests to look into less expensive alternatives, to free up Highway Department employees for other important work, and to reduce the negative environmental impact of runoff from leaf piles and clogged storm drains.

“The economic impact of the current program is very significant. The leaf vacuums consume large quantities of diesel fuel. They require two trucks, one to tow the vacuum and another to transport workers and warn off and control traffic. The impact on the Highway Department budget has become extremely burdensome due to huge increases in fuel costs. In addition, the equipment is old and, in all likelihood, will have to be replaced soon at substantial expense.

“The financial comparison that Craig Useted will present shows a savings of \$164,324.62 for 2009 and \$192,524 for 2010 if we change to bagged leaf pick-up. I should point out that every \$150,000 represents a percentage point of your property tax.

“General Foreman Useted's presentation does not include the savings that have been realized by the reduction in the highway department by four employees since the fall of 2008: one position was terminated in 2008, one has retired, one took a leave of absence to try police training, and one is likely to take our early retirement incentive. This reduction in personnel results in an annual savings of approximately \$313,517.28 with salary and benefits which will continue beyond this year and next because we are not intending to fill these positions. But these reduced numbers mean that we have one less crew and would result in fewer people available to vacuum leaves. We are planning on using only two trucks and two crews for picking up bagged leaves. That leaves other highway workers available to continue with road maintenance and repair, cleaning catch basins and so on.

“This discussion is not all about finances. We need to consider the environmental implications of vacuuming leaves as well. While leaves are being vacuumed, the engines run at full throttle spewing fumes and carbon dioxide into the air while considerable diesel fuel is being used. It is also a noisy operation. New State storm water regulations that should be implemented shortly will prohibit piling up loose leaves in certain watersheds; this will impact small sections of our Town. The reason for this is that substances on the leaves placed near storm drains run off into the drains and have a negative impact on our water system. Additionally, blowing leaves into our woods and composting instead of blowing them into our streets is better for the environment.

“After Highway General Foreman Useted presents his information, we will open the discussion to the public.”

Mr. Useted said the cost of the leaf vacuuming program was \$164,619.10 in 2007 and \$198,964.62 in 2008, but that if leaves were bagged and trucks were rented to pick up the leaves, the annual savings for 2009 would be approximately \$165,000. A leaf bagging system would require only two work crews and would free up other crews to do work including road sweeping,

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catch basin inspections and cleanings, and drainage fall out inspections which are required to comply with MS4 regulations, as well as road and catch basin repair, roadside mowing and right of way clean up. Mr. Ussted said that the trucks can be prepared and maintained for snow removal if they are not being used for leaf vacuuming. He added that public safety issues exist when leaves are piled on the roadsides including the narrowing of travel lanes, slippery driving conditions due to wet leaves, and children playing in piles of leaves.

Town residents Frank Benish, Ed Lobermann, Diane Roth, Linda Trummer Napolitano, Kerry Lutz, Bob Romano and Sue Shimer asked questions and expressed opinions regarding the current leaf vacuuming program and alternatives, including the need for and costs of replacing vacuuming equipment, outsourcing leaf pick up to continue it in a more cost effective way, support for discontinuation of the current program, vacuuming on lots of one acre or less, and the impact on trees from blowing leaves into the woods. Some said discontinuing leaf vacuuming and changing to leaf bagging would significantly affect the quality of life and increase expenses for some residents, while others said the change would be a relatively small sacrifice to achieve significant cost savings.

Mr. Ussted said that the older vacuuming equipment was purchased in 1989, the newer in 2004 and if the equipment continues to be used most of it would need to be replaced at a cost of \$80,000 for the vacuums alone. With regard to outsourcing leaf vacuuming, Supervisor Berman said the costs would be comparable to having it done by the Highway Department and the Board would not want to reduce staff to the point where it would adversely impact snow removal. Sue Shimer said she has been blowing leaves into the woods on her property for over forty years and has not lost any trees as a result.

Councilman Weaver said that when the decision was made last year to continue the leaf vacuuming program the estimated cost saving was not as significant as the estimated savings of about \$165,000 for this year and close to \$200,000 for next year. Mr. Weaver said the Town should now go forward with a leaf bagging program.

Councilman Kittredge said the Highway Department staff has been reduced by three employees and the Police Department staff by two officers. She added that Town employees have been working with the Town Board to realize cost savings.

Councilman Schiliro said with the residents, Town employees, department heads and Board working together to cut expenses the Town will be able to get through the years of difficult times.

Councilman Schiliro moved, seconded by Councilman Weaver, to immediately discontinue the vacuuming of leaves and to provide year-round bagged leaf service.

The roll vote was as follows:

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

Noes: None.

With regard to the Request for Proposal (RFP) to operate an organic recycling facility on existing town controlled property on Middle Patent Road, Superintendent Richard Fon presented the scope of services which would include the grinding, handling and transferring of clean brush, leaves, and other organic yard waste. Supervisor Berman said Town residents would be able to pick up mulch, compost and topsoil at the facility at no cost. General Foreman Ussted said Town departments would also be provided with mulch, compost, top soil, log grinding from town tree removal, and disposal of old asphalt and curbing, all at no cost, resulting in savings of \$30,250 in addition to the savings of \$150,000 through the elimination of the leaf grinding contract.

Kerry Lutz commended the Board and the Departments of Public Works and Highway for their creative cost savings solutions.

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of the form of the RFP to operate an organic recycling facility on existing Town controlled property located on Middle Patent Road.

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The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of a proposal from the Highway Department to rent two garbage trucks from Big Truck Rental for two months for bagged leaf collection at a cost of \$26,000.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, that the proposed local law to change the definition of a private stable, include fire safety provisions for barns, and create a reinspection program of private stables be referred to the Planning Board with the request that it declare its intent to be Lead Agency. Upon the request of Mark Miller, Veneziano and Associates, it was further moved that the special use permit application for Archer Stables also be referred to the Planning Board.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, receipt of a memo from Superintendent Richard Fon regarding his recent inspection of the buildings and grounds at Archer Stables.

The roll vote was as follows:

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

Noes: None.

John Kirkpatrick, Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, representing the Fareri Companies, appeared before the Board regarding the petition to amend the zoning for the properties at 170 Bedford Road and the Cochran property located on Old Route 22. Mr. Kirkpatrick explained that the applicant is requesting approval for a “swap” of zoning with a change for 170 Bedford Road from RB to R-MF-A and a change for the Cochran property from R-MF-A to RB.

When Supervisor Berman asked Mr. Kirkpatrick to confirm that the Fareri Companies does not yet own the Cochran property, but that the current owner is in favor of the rezoning proposal, he confirmed this was correct. Town Attorney Baroni said the Board needed a letter from the property owner indicating agreement that the Fareri Companies could proceed with the rezoning petition, as well as a copy of contract documents regarding the pending sale of the property. Supervisor Berman, on behalf of Councilman Geist, asked that the Planning Board review and comment on his questions, as detailed in an e-mail, regarding the issues of sewer capacity, property ownership, density, and senior housing.

Councilman Weaver said the proposed plan does not include an outdoor recreation area for residents of the units and he would like to see this incorporated in the plan.

Supervisor Berman said the Housing Board has found that two bedroom units are more desirable than one bedroom units.

Councilman Weaver moved, seconded by Councilman Schiliro, receipt of an application for a zoning text amendment to Section 213-22.1.B(1) and (5) to allow transfer of eight Middle Income Units (MIUs) from the Cochran property, Old Route 22 to 170 Bedford Road; and the development of an additional MIU and seven market rate units at 170 Bedford Road; and further moved that the matter be referred to the Planning Board for its study and report.

The roll vote was as follows:

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

Noes: None.

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Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of franchise fee payments from Cablevision for the second quarter ending June 30, 2009 in the amounts of \$32,613 and \$7,045.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, receipt of a letter from Cablevision with regard to channel realignment.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Kittredge, receipt of a franchise fee payment from Verizon for the second quarter of 2009 in the amount of \$9,738.88.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, receipt of a letter from Verizon informing the Town of a rate change for Verizon's FiOS TV Premier Service.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, receipt of letters from Tax Receiver Colombo regarding Small Claims Assessment Review Settlements and the Board approved refunds as follows:

Susan Lampert	24 Orchard Drive	\$ 847.51
Joseph Rinaldi	19 Kensico Knoll Place	\$ 192.69
Michael Franzese	26 Rock Cliff Place	\$ 157.66
Joseph Cardone	21 Rock Cliff Place	\$ 280.28
Anthony Ljubicich	22 Sniffen Road	\$ 253.63
June Grimeh	47 Wrights Mill Road	\$2,049.10
Eugene Sidoti	5 Miller Circle	\$ 429.08
Traci Berliner	12 Quaker Meeting House Road	\$ 184.88
R. & C. Gallagher	1 Davis Drive	\$ 359.30
R. & L. Lewin	36 Rock Cliff Place	\$ 201.45
Valerie J. Seelig	15 Leisure Farm Drive	\$1,032.24

A Small Claims Stipulation of Settlement was received and the Board approved a refund as follows:

Janet Segatti	33 Sunrise Drive	\$ 517.13
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The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the request of General Foremen Usated for the release of highway bonds to Leo Vircillo, Permit #840, in the amount of \$500; Pietro Disisto, Permit #863, in the amount of \$500; and Mel Donaton, Permit #869 in the amount of \$500.

The roll vote was as follows:

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

Noes: None.

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Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a mortgage tax update for July 2009 from Comptroller Dawn Donovan. The projection for July 2009 is \$47,000.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, receipt of a letter from the New York Power Authority regarding efforts to stabilize future energy costs for Westchester governmental customers.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, approval for the Greenacres Garden Club to place a sign under the eagle and one freestanding poster sign at the Northeast corner of Maple and Bedford Road to publicize its Flower Show scheduled for October 10, 2009.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, approval of the request of the North White Plains Fire Company No. 1, Inc., for the renewal of its Special Use Permit to sell Christmas trees for the 2009 season.

The roll vote was as follows:

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

Noes: None.

Councilman Schiliro moved, seconded by Councilman Kittredge, approval of the form of the Request for Proposal (RFP) for the replacement of the existing boiler and related controls at Town Hall, 15 Bedford Road.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the resolution and authorization for the Supervisor to be a co-applicant in connection with the New York State Local Government Efficiency Grant for the development of a county-wide septic system database.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, authorization for Comptroller Donovan to make payment to Labor Relations Consultant Michael Richardson for August, 2009 in the amount of \$3,480.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the request of Byram Hills School District to place a sign under the eagle to publicize its Transportation Referendum Vote, October 6, 2009.

The roll vote was as follows:

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

Noes: None.

Upon the request of Superintendent Barnard, Councilman Kittredge moved, seconded by Councilman Weaver, authorization for Comptroller Donovan to make payments to:

- 1) Landscape Architecture Consultants for architectural services for the period September 31, 2008 through August 4, 2009 for the Lombardi Park access road project in the amount of \$6,413.04.
- 2) Landscape Architecture Consultants for construction documentation phase at Community Park flag pole memorial in the amount of \$2,000.

The roll vote was as follows:

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

Noes: None.

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

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of Workers Compensation Reports for Robert Lombardi, Highway Department, and Jordan Friedrichs, Recreation Department.

The roll vote was as follows:

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

Noes: None.

Town Clerk Leber read aloud the resolution regarding the Voluntary Resignation or Retirement Incentives being considered by the Board for non-union, CSEA and PBA employees as follows:

**WHEREAS**, in an effort to address the current economic crisis, which continues to impose unprecedented pressures on the Town of North Castle's financial condition, the Town Board has determined that there is a potential for substantial short-term and long-term savings by implementing a policy whereby an employee who voluntarily resigns or retires from employment between September 30, 2009 and February 28, 2010 will receive an incentive payment; now, therefore be it

**RESOLVED**, that the Town Board adopts the following "Voluntary Resignation or Retirement Incentive":

#### **Voluntary Resignation or Retirement Incentive**

An employee who voluntarily resigns or retires from employment between September 30, 2009 and February 28, 2010 will receive the following lump sum payment to be made in the second payday in January 2010.

Effective Date of Separation	Amount of Incentive
October 2009	\$15,000
November 2009	\$12,500
December 2009	\$10,000
January 2010	\$7,500
February 2010	\$5,000

To be eligible for this incentive, the employee must submit the attached Notice of Intent to Resign or Retire to the Town Clerk's Office on or before October 1, 2009. As soon as possible after receiving the employee's notice of intent, the Town Supervisor will produce a Separation Agreement for the employee to consider and, if acceptable, for the employee to sign.

AND BE IT FURTHER RESOLVED, that the Town Clerk of the Town of North Castle hereby is directed to forward certified copies of this resolution to the appropriate Town officials.

Supervisor Berman said that Sheila Tyler, Labor Relations Specialist for CSEA, has signed the Memorandum of Agreement for the Voluntary Resignation or Retirement Incentive. Ms. Berman said the Board does not know if the PBA will be signing the Memorandum of Agreement for this incentive.

Councilman Kittredge moved, seconded by Councilman Weaver, adoption of the resolution regarding the Voluntary Resignation or Retirement Incentive for non-union employees.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, adoption of a resolution and approval of a Memorandum of Agreement regarding the Voluntary Resignation or Retirement Incentive for employees in CSEA Units 1, 2 and 3; and the Supervisor was authorized to execute the Memorandum of Agreement (MOA).

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, adoption of a resolution and approval of a Memorandum of Agreement regarding the Voluntary Resignation or Retirement Incentive for employees in the PBA; and the Supervisor was authorized to execute the Memorandum of Agreement.

The roll vote was as follows:

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

Noes: None.

Supervisor Berman said that the Board does not know how many employees will choose retirement or resignation incentives. If only a few employees do, the cost savings may not be significant enough and the Board would need to consider other measures.

Town Clerk Leber read aloud the resolution regarding the Annual Medical Insurance Buy-Out being considered by the Board for non-union, CSEA and PBA employees as follows:

**WHEREAS**, has determined that there is a potential for substantial short-term and long-term savings by implementing a policy whereby a full-time employee who is eligible for medical insurance coverage under the parties' collective bargaining agreement may receive a buy-out in lieu of receiving medical insurance and prescription drug benefits, now, therefore be it

**RESOLVED**, that the Town Board adopts the following "Annual Medical Insurance Buy-Out" policy:

**Annual Medical Insurance Buy-Out**

**Eligibility:** A full-time employee who is eligible for medical insurance coverage made available through the Town may receive a buy-out in lieu of receiving medical insurance and prescription drug benefits. To be eligible for the medical insurance buy-out, the employee must provide documentation of comparable medical insurance coverage and sign an appropriate waiver of medical insurance coverage. Notwithstanding the above, in the event an eligible employee is married to another eligible employee of the Town, they must either enroll in two individual plans or one family plan and will not be eligible for this buy-out.

**Amount of Buy-Out:** Each year, the employee will receive forty percent of the Town's annual premium contribution for the coverage the employee is eligible for (individual or family). For example, if the Town is contributing 80% of a \$16,800 annual premium for family coverage, the amount of the buy-out would be 40% of \$13,440, or \$5,376. The buy-out is subject to applicable taxes.

**Method of Payment:** Partial payment of the buy-out will be made in the employee's regular bi-weekly paycheck for each pay-period the employee is eligible for the buy-out.

**Reinstatement:** In the event the employee loses coverage under the alternate insurance plan, the employee may resume coverage under the medical insurance plan made available through the Town. For certain qualifying events, coverage will begin on the first of the month immediately following the employee giving notice, provided the employee gives such notice at least five business days prior to the first of the month and meets all eligibility requirements of the insurance plan. An employee may elect to resume coverage under the medical insurance plan without a waiting period during the annual open enrollment period (see the Town Clerk's Office for details).

**Note to Employees Preparing for Retirement:** To be eligible to receive medical insurance in retirement under the current New York State Health Insurance Program (NYSHIP), an employee must be enrolled in the NYSHIP plan at the time of retirement. Therefore, such employee should elect to resume coverage under the NYSHIP plan during the annual open enrollment period in the year before the employee plans to retire (see the Town Clerk's Office for details).

AND BE IT FURTHER RESOLVED, that the Town Clerk of the Town of North Castle hereby is directed to forward certified copies of this resolution to the appropriate Town officials.

Councilman Kittredge moved, seconded by Councilman Weaver, adoption of a resolution regarding the Annual Medical Insurance Buy-Out for non-union employees.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, adoption of a resolution and approval of a Memorandum of Agreement regarding the Annual Medical Insurance Buy-Out for employees in CSEA Units 1, 2, and 3; and the Supervisor was authorized to execute the Memorandum of Agreement.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, adoption of a resolution and approval of a Memorandum of Agreement regarding the Annual Medical Insurance Buy-Out for employees in the PBA; and the Supervisor was authorized to execute the Memorandum of Agreement.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, authorization for the Supervisor to execute the lease agreement with Verizon for a monopole location on Water District No. 2 property on Middle Patent Road, Armonk, subject to permissive referendum and to an environmental determination pursuant to SEQR.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Weaver, Schiliro, Supervisor Berman

Noes: None.

Kerry Lutz said it is important to improve cell phone service in Town to address business needs and safety issues.

Councilman Kittredge moved, seconded by Councilman Schiliro, ratification of letters of agreement between the Town and CSEA Unit II with regard to two employees in the Recreation Department. Excerpts follow:

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“With regard to Joyce Graefe, a Bus Driver in the Recreation Department whose hours were reduced from 20 to 15 effective January 1, 2009 and who is no longer entitled to benefits, the following would apply:

- Ms. Graefe shall retain the balance of any accrued, unused sick leave she had as of the date of her reduction in hours and may use such days as necessary, consistent with and subject to Town and Department policies and procedure. As a part time employee, she will not be entitled to terminal leave pay upon retirement, but her unused, unpaid sick leave would be reported to the retirement system and added to her service credit.
- Ms. Graefe shall retain the balance of any accrued, unused vacation days she had as of the date of her reduction in hours and may use such days when desired, consistent with and subject to Town and Department policies and procedures, and upon approval of her Department Head. She may carry no more than two weeks vacation over to the next year. Upon resignation or retirement, she will be paid for unused vacation time at the then current contractual wage.
- Ms. Graefe shall receive salary increments as though she were still on Group and Step as delineated in the CSEA Unit 2 collective bargaining agreement. (She is on Step A-7 as of the date of this letter agreement).

“With regard to Kathy Lynch, an Intermediate Clerk in the Recreation Department whose hours were reduced from 17 to 14 effective January 1, 2009, the following would apply:

- The Town shall rescind the resolution of December 17, 2008 reducing Ms. Lynch’s regularly scheduled hours.
- Ms. Lynch will be entitled to all benefits available to a 17 hours per week part time employee, including participation in the Town’s health and dental and vision plans.”

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the request of Chief Robert D’Angelo for Lt. Peter Simonsen and Sgt. Timothy See to attend Colt Defense Training Course – Armorers School, September 29 – October 1, 2009.

The roll vote was as follows:

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

Noes: None.

Councilman Weaver moved, seconded by Councilman Schiliro, approval of the request from Superintendent Fon to attend an OSHA Compliance workshop on December 7, 2009.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, approval for KG&D Architects to assemble, at no up-front cost to the Town, a grant request and application to NYSERDA for Federal Stimulus energy savings funding.

The roll vote was as follows:

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

Noes: None.

Councilman Kittredge moved, seconded by Councilman Weaver, approval of the request of Byram Hills Bobcat Boosters to place a sign under the eagle to publicize the Community Homecoming at Byram Hills High School scheduled for October 2 and 3, 2009.

The roll vote was as follows:

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

Town Board Minutes  
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Noes: None.

With regard to the Seven Springs settlement, Sue Shimer said that even if the Town had initially cooperated with the plaintiff there would have been litigation; the Town should not cooperate simply because a plaintiff may be litigious.

The Town Board audited and approved payments totaling \$629,466.41 as indicated on Warrant #15.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 10:00 p.m. in memory of Barbara Donovan, Wayne Chowanel, Elizabeth Gay and August Petriello.

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Ann Leber, Town Clerk

Dated: September 22, 2009

## PUBLIC HEARING

September 9, 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 September 9, 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 adoption of a Local Law to update and modernize Chapter 83 of the Town Code entitled Carnivals and Circuses.

By Order of the Town Board  
Ann Leber, Town Clerk

Dated: August 21, 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.

Director of Planning Kaufman reviewed the history of a recent application for a special event permit which led to the need to review and update Chapter 83, Carnivals and Circuses, to ensure it met modern safety standards prior to the issuance of a license.

Councilman Kittredge inquired whether the annual Fol-de-Rol would be subject to proposed licensing requirements. Mr. Kaufman replied that it would be, but recommended adding language to Section 83-8 to exempt any event occurring on Town property or sponsored in whole or in part by the Town.

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 7:45 p.m.

The roll call vote was as follows:

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

Noes: None

Councilman Kittredge moved, seconded by Councilman Weaver, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impact and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

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

Noes: None

Councilman Kittredge moved moved, seconded by Councilman Weaver, the adoption with proposed amendments of Local Law 10 of the year 2009 for the purpose of considering the adoption of a Local Law to update and modernize Chapter 83 of the Town Code entitled Carnivals and Circuses.

The roll call vote was as follows:

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

Noes: None

The Local Law follows at the end of these minutes.

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Ann Leber, Town Clerk

Dated: September 21, 2009

# **TOWN OF NORTH CASTLE**

## **Local Law No. 10 For The Year 2009 Adopted September 9, 2009**

### **A local law to update and modernize Chapter 83 “Carnivals and Circuses”**

#### **Section 1. Replace Chapter 83 of the Town of North Castle Town Code with the following text:**

##### Chapter 83, SPECIAL EVENTS

##### 83-1. Legislative intent.

This chapter has been enacted to protect the residents of the Town of North Castle and the public at large from nuisances and hazards which result from the unregulated operation of special events, bazaars, carnivals, circuses, fairs and other events of a similar type.

##### 83-2. Definitions

As used in this chapter, the following words and phrases shall have the meanings assigned:

AMUSEMENT RIDE -- Any kind of machine, apparatus or device which is designed or used to propel, project or move a person through the air, along the ground or otherwise, and shall include a carousel, Ferris wheel, gravity steeplechase, scenic railway, parachute jump and other similar machinery customarily associated with amusements or carnivals.

CHARITABLE, RELIGIOUS OR NOT-FOR-PROFIT CORPORATION EVENT OR ACTIVITY -- Any special event conducted by a charitable organization as defined in Article 7-A of the Executive Law of the State of New York or a Religious Corporations Law corporation as defined in Article I of the Religious Corporations Law of the State of New York or a not-for-profit corporation as defined in Article I of the Not-For-Profit Corporation Law of the State of New York.

PERSON -- Any individual, firm, partnership, corporation, association, company or organization of any kind.

SPECIAL EVENT -- Any bazaar, carnival, circus, fair, pony track, rodeo, haunted house, corn maze, outdoor meeting, auction, special outdoor entertainment, or other amusement of like kind and nature.

SPECIAL EVENT PERMIT -- A permit or instrument granted by the Town Clerk pursuant to the provisions of this chapter.

TOWN -- The land area located within the boundary of the Town of North Castle.

##### § 83-3. Permit required.

It shall be unlawful for any person or individual to conduct, sponsor or operate a special event, outdoors or under canvas, within the limits of the Town of North Castle without a permit and meeting the following provisions:

- A. All special events shall require the provision of a “fire watch” by the local fire department and/or North Castle Fire Marshal, the cost of which shall be paid for by the Applicant. The Fire Marshal may also approve other fire protection measures to the satisfaction of the North Castle Fire Marshal, the cost of which shall be paid for by the Applicant.
- B. All special events shall require the provision of security and/or traffic control by the Town of North Castle Police Department to the satisfaction of the Town of North Castle Police Chief. The cost of all event security and/or traffic control shall be paid for by the Applicant.
- C. Any area to be used for special event purposes shall not be located closer than 250 feet to an existing residential house footprint.
- D. Bathroom facilities accessible, and adequate in number, to satisfy the needs of patrons of the special event shall be provided to the satisfaction of the Building Inspector.

- E. Amusement rides, as a temporary facility not to exceed ten (10) days' duration, shall be permitted in any special event, including a charitable, religious or not-for-profit corporation event or activity, only upon compliance with the following additional procedure:
- (a) Eight (8) copies of a sketch showing the area to be occupied by the proposed amusement rides.
  - (b) A filing fee of one hundred seventy-five dollars (\$175).
  - (c) Not more than eight (8) amusement rides per acre of vacant land shall be permitted.
  - (d) Compliance with the applicable provisions of the Labor Law of the State of New York.
  - (e) Compliance with the applicable rules and regulations of the Town of North Castle Building Department and the Code of the Town of North Castle.

§ 83-4. Application procedure; fee.

Any person desiring to procure a permit as herein provided shall file with the Town Clerk, for submission to the Town Board, a written application, upon a form prescribed by the Town Board and furnished by the Town Clerk, together with an application fee of \$100. In addition, the Applicant shall provide the following:

- A. The proposed location of the special event; the dates when the special event shall be conducted; the names, addresses and phone numbers of the sponsor(s) and operator(s);
- B. Whether the event is open to the general public;
- C. The maximum number of persons that the applicant will permit to attend the special event per day and in total;
- D. Plans showing the layout of the event area, including the location of all existing structures and improvements, the location and description of all event related temporary structures, tents, stands, ingress and egress, parking, signs, lighting, electrical equipment, sound equipment, mechanical equipment, portable toilets, and any other information related to the event that may be required by the Town in order to make an informed decision regarding the issuance of a special event permit.
- E. The written permission of the property owner.
- F. A certificate of insurance from an insurance company licensed to do business in New York State with the following minimum coverages:
  - (1) Bodily injury: three hundred thousand dollars (\$300,000.), one (1) person.
  - (2) Bodily injury: one million dollars (\$1,000,000.), one (1) accident.
  - (3) Property damage: one hundred thousand dollars (\$100,000.), one (1) accident.
- G. The approval of the Westchester County Department of Health, if required.
- H. A copy of the temporary building permit for a pavilion, tent or other temporary enclosure, issued by the Building Department.
- I. The posting of a cash bond of five hundred dollars (\$500) to guarantee cleanup by the exhibitor after the special event, except where the special event is conducted on premises owned by the person making the application.
- J. Evidence of the approval of a detailed itinerary and plans and specifications for tents, seats, entrances and exits, issued by the New York State Labor Department, Division of Safety and Health.
- K. A certificate of structural integrity and safety of the rigging and/or installation of any temporary enclosure proposed to be used by the public, and the seating and any other structure proposed to be used by the public. Such certificate shall be based upon an evaluation of the installation after its completion and prior to its use and shall bear the signature and seal of an engineer or architect registered for professional practice in the State of New York.

L. Public Hearing.

- 1) A public hearing on an application for a special event permit shall be scheduled and conducted by the Town Board within twenty (20) days of the date the application is deemed complete, unless this time limit is waived by the applicant.
- 2) Notice of any hearing before the Town Board shall be published in a newspaper circulating within the Town of North Castle at least ten (10) days prior to that date of said hearing. Any mailing of notices that may be required by the Town Board shall be at least ten (10) days before such hearing. The preparation and cost of publication and mailing of any notice required for such hearing shall be at the cost and expense of the applicant.
- 3) Notice of hearing shall be sent by certified mail, return receipt requested, to all property owners within a distance of two hundred fifty (250) feet from all sides of the of the property. In addition, the Town Board shall give any other notice required by law.

§ 83-5. Issuance of permit; permits not assignable.

Upon the filing of the application and payment of the application fee, the Town Clerk shall, upon the approval of the Town Board, issue to the applicant a permit as provided in § 83-1, signed by the Town Clerk. After discussion by the Town, no event deemed to be a nuisance, safety hazard or otherwise not conforming to the public welfare shall be permitted and no permit shall be issued for such event. A permit shall not be assignable.

§ 83-6. Revocation of permit; appeals.

The Town Board may, at any time, for a violation of this chapter or any other ordinance or law, revoke any permit. When a permit shall be revoked, no refund of any part of the application fee shall be made. Notice of such revocation and the reason therefore, in writing, shall be caused to be served by the Town Clerk upon the person named in the application, or by mailing the same to the address given in the application, and upon filing a copy of such revocation with the Chief of Police. The granting, refusing or revocation of such permit by the Town Board shall be subject to review by provisions of law.

§ 83-7. Restrictions.

- A. Any such permit shall be issued subject to observance of all state, county and town laws, rules and regulations as to health, safety and general welfare and subject to reasonable regulations of the Building Department, Fire Marshal, Police and Highway Departments of the Town of North Castle.
- B. No such affair, as set forth herein, shall be conducted prior to 10:00 a.m. or after 12:00 midnight.

§ 83-8. Exempt activities.

Provisions hereof shall not be applicable to:

- (a) Charitable, religious or not-for-profit corporation events or activities, or school special events conducted upon their own premises.
- (b) Events such as weddings, parties, religious celebrations and functions, and other similar events, occurring within, or upon the grounds of, a private residence, where the property owner receives no compensation for hosting the event and guests/attendees are not charged an admission fee.
- (c) Any event sponsored in whole or in part by the Town of North Castle, the County of Westchester or the State of New York.
- (d) Any organized special events conducted at sites or facilities typically intended, used, and designed for such events. Examples of such exempt activities include, but are not necessarily limited to, sporting events conducted on courses or fields intended and used for such activities; wedding services conducted at churches, country inns, reception halls, or similar facilities; conferences and similar events in facilities designed for such use.

§ 83-9. 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 \$250 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.

**Section 2.** Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

**Section 3.** Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

**Section 4.** Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

Dated: September 10, 2009