

**TOWN OF NORTH HARMONY  
TOWN BOARD MEETING  
MONDAY 7/13/09 8:00 PM**

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<b>SALLY P. CARLSON, SUPERVISOR</b>	<b>PRESENT</b>
<b>RALPH WHITNEY, COUNCILMAN</b>	<b>PRESENT</b>
<b>ART THOMAS, COUNCILMAN</b>	<b>PRESENT</b>
<b>FRANK STOW, COUNCILMAN</b>	<b>PRESENT</b>
<b>RICHARD SENA, COUNCILMAN</b>	<b>PRESENT</b>

**OTHERS PRESENT:** Jay Gould, Legislator; Brad Lawson, Zoning CEO; Gary Ryan, Highway Sup't.; Dave Lloyd, Stormwater Planning; Howard Peacock, Justice; Dave Stapleton, Attorney; Steve Vincent, Chautauqua Snowmobile Club; Richard Pacitti; Robin Miller, Bookkeeper; John & Penny Best

- **PLEDGE**

- **MINUTES**

MOTION #108 OF 2009

ON A MOTION MADE BY MR. THOMAS AND SECONDED BY MR STOW THE MINUTES OF THE 6/8/09, BOARD MEETING WERE ACCEPTED AS SUBMITTED BY THE CLERK AND THE MOTION WAS CARRIED UNANIMOUSLY.

- **ANNOUNCEMENTS**

- **Art Thomas selected to be Grand Marshal of the Ashville Day Parade 7/18/09**
- **Stow Yard Sale to be held Friday and Saturday 7/17-18/09**

- **PUBLIC COMMENT**

**RICHARD PACITTI – SPEEDING ON BUTTS ROAD**

**Mr. Pacitti** said he has appeared many times to discuss speeding on Butts Road. He said every summer when the speed limit on Rt. 394 is reduced to 45 mph the amount and speed of traffic increase on Butts Road. He asked what they could do as individuals to decrease the speeding on the road. He suggested perhaps a 4-Way Stop sign at the intersection of Butts and Bly Hill Roads would help. He said he felt that if the speed limit was lowered at least 5 miles lower (40 mph) than Rt. 394 it would deter those using it as a faster way to get to their destination. He also suggested that the purchase of a speed trailer would slow things down.

**Mrs. Carlson** said that had been studied and \$40,000 a year to operate a speed trailer is a large expense.

**Mr. Pacitti** said at the last meeting he attended the town was discussing spending \$20,000 for a piece of property in Stow and he didn't think that was a good idea. He asked what the town wanted the property for.

**Mrs. Carlson** said the town wanted the property cleaned up and they intended to sell it. She said if you lived next door to it you would understand.

**Mr. Stow** asked if there were certain times of the day that the traffic and speeding were worse on Butts Road.

**Mr. Pacitti** said yes, in the morning and in the evening.

**TOWN BOARD**

**Mr. Sena** said there are a lot of trucks coming through there as well.

**Mr. Pacitti** said if the road is wet, it is very noisy and if you are on the road you will get wet. He said a lot of people used to walk on the road, but you can't do that anymore. He said you can't get off the road because there are no shoulders. He said he has been talking about it for many years and he appreciates the fact that the speed limit was reduced from 55 to 45 mph, but people know that there are no police on the road and they know that they can get away with speeding.

**Mrs. Carlson** said she could call Sheriff Gerace and ask if he could station a police cruiser there.

**Mr. Sena** said any time you are out between 7:00-8:30 AM it is bad.

**Mr. Stow** said that would be a good time to suggest an officer's presence on the road.

**Mr. Pacitti** said the officer could park in his driveway if he wanted.

**Mrs. Best and Mrs. Miller** said they had both recently seen a Sheriff's car stationed on Butts Road.

**Mrs. Carlson** asked Mr. Ryan if state approval was required to place 4-Way Stop signs at the Butts and Bly Hill Roads (both town roads) intersection.

**Mr. Ryan** said he did not know.

**Mr. Lloyd** said he believes you do have to get state approval.

**Mr. Ryan** said if you lower the limit on Butts Road people will just go to his road or another road. He asked where does it stop?

**Mr. Sena** said he thinks it is worse on Butts because they are the first road up from Rt. 394.

Others in attendance said speed limits on their roads are ignored as well.

**Mr. Pacitti** suggested that all town road speed limits be lowered. He said the town roads are not made for 55 mph traffic and large trucks.

**Mr. Peacock** agreed the town roads are not made for 55 mph speeds and said that if the speed limit on Rt. 394 were left at 55 mph year round it would reduce the traffic on town roads.

**Mrs. Carlson** said that has been discussed in the past. She said you cannot reduce the speed limit without state approval.

**Mr. Pacitti** said that the town should just change the speed limits and let the state come back and say you can't do it.

**Mrs. Carlson** said without state approval any tickets issued would not be enforceable.

**Mr. Sena** said the town should petition the state to reduce the speed limits in the town.

**Mrs. Carlson** said we could certainly ask.

**Mr. Pacitti** said there was an article in the Post Journal that suggested leaving Rt. 394 at 45 mph year round.

**Mrs. Carlson** asked Mrs. Thomas to request that NYS DOT perform a traffic study on Butts Road and petition for a 4-Way Stop sign at the intersection of Butts and Bly Hill Roads.

**Mr. Whitney** referred to an Association of Towns article which states that according to **Vehicle and Traffic Law Sec. 1651 town boards have jurisdiction to regulate traffic on highways within the town; may designate town or county highways as through highways; and may designate an intersection of town and county highways as a stop intersection or yield intersection, regulating the traffic at such intersections accordingly. Once a highway has been designated as a through highway, the town may stipulate that highways entering such through highways may be regulated via stop signs, yield signs or flashing lights. Note that the town board has the authority to designate both town and county roads as through highways, whereas the county superintendent may only designate county roads as such.... In any event, it is advisable that the town and county coordinate their efforts in regulating these intersections.** He said he thinks it spells it out if it is two town roads.

**Mr. Stapleton** said he and Mr. Ryan would take a look at the information presented and determine whether or not the town could act on its own.

**Mrs. Carlson** said if the town cannot act, it will be pursued through the correct channels.

MOTION #109 OF 2009

MR. SENA MOTIONED THAT SUBJECT TO THE FINDINGS OF THE TOWN ATTORNEY, A 4-WAY STOP SIGN BE INSTALLED AT THE INTERSECTION OF BUTTS AND BLY HILL ROADS. MR. THOMAS SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

• CORRESPONDENCE:

1. TIME WARNER- Two Letters- Service Changes
2. CHAUTAUQUA COUNTY FIRE SERVICE- News Letter
3. NYS DOT- \$109,125.18 CHIPS Deposited
  - Restricted Highway
4. NYS UNIFIED COURT- Justice Court Assistance Program Grant
5. NYS INDUSTRIES
6. NYS ENVIRONMENTAL FACILITIES- Water Projects
7. NYS D.E.C. - Water Projects
8. BINGHAMTON UNIVERSITY
9. PLANNING BOARD MINUTES/ZONING BOARD MINUTES
10. WILLIAM PARMENT- Sewer Line Funding (copy in minute book)

Mrs. Carlson said she had written to Bill Parment, NY Legislator, about the sewers. She said he has responded and read his letter for the board.
11. JOE BERGEN- Town Law Section 94 Petition for Permissive Referendum on Tolman/Kucera Sewer Studies for southwest side of the lake

Mrs. Carlson read a letter from Mr. Bergen which stated that Town Law Sec. 94 does permit North Harmony to submit the two proposed contracts for sewer study to referendum without the need of the petition process. He asked that the town arrange to hold such referendum without the need to submit petitions and said it seemed at the 6/1/09 joint Chautauqua / North Harmony meeting there was an interest in doing this but the advise was the town itself could not arrange for the vote. He said that seemed to be in error according to the plain reading of this section.

Mr. Stapleton said he did not remember giving any opinion that it was impossible for the town board to pass a resolution authorizing a permissive referendum. He said the statute provides for that, but whether or not it was practical or the town wanted to fund the referendum vote was a question to discuss later in the meeting.
12. LEE CHILCOTE – Zoning Decision on Spinner Property

*To be discussed later in the meeting.*

- **OLD BUSINESS:**

- **YOUTH REC – Report from COI, Inc.**

**Mrs. Carlson** said Youth Rec began on 7/6/09. She said COI has reported that they expected 24 youth to participate and by the end of the week they have 39 youth enrolled with an expected participation rate of 25-30 daily. She said they have 5 youth volunteers and the theme for the first week is Native Americans.

- **NYS FARM BILL**

**Mrs. Carlson** asked Mr. Sena if he was going to send something on that. Mr. Sena said he would.

**Mrs. Carlson** asked Mrs. Thomas if she normally sends out the Planning Board Minutes to the town board.

**Mrs. Thomas** said that Mrs. Best does those minutes but she does not usually send them to the town board. She said that the complete minutes of all town meetings are posted to the town web site and available to anyone.

**Mr. Thomas** said if he could find them there anyone should be able to.

- **JOINT SESSIONS OF BOARDS**

**Mrs. Carlson** thanked everyone who attended and said these types of sessions would be a good thing to continue. She said the boards need to be acquainted and it helps to have that type of communication.

- **DAVE SPAN – Re Trees at Butts Park**

**Mrs. Carlson** said Mr. Span had called concerning the trees at the park. She said Mr. Span has marked the trees and said now is the time to harvest them since the trees 12” and above are dying. Mr. Span wanted to know if the board wanted to meet with him or if they would like him to go ahead and advertise for bids on the timber.

**Mr. Best** said that timber prices are down and this would not be a good time to sell that timber. He said that timber can die and the price of the logs is not hurt for about a year. He said there is a lot of hard maple that will bring good prices if the town waits. He said there is not a lot of timber there and the town would want to get the best money available from it, especially if prices go up.

**Mrs. Carlson** asked if the town should wait one year to sell.

**Mr. Best** said usually prices go up in the winter and a waiting period of 5 months should see increases. He said there is very little ash there and no one would put a price on it when they bid on it.

MOTION #110 OF 2009 (WITHDRAWN)

MR. STOW MOTIONED THAT THE TOWN WATCH THE MARKET FOR SIX MONTHS AND PUT OUT THE BID WHEN PRICES GO UP.

*There was further discussion of the health of the trees. Mr. Span said the larger trees are dying but the younger trees are healthy.*

*Mr. Gould said if the trees are advertised for bid the town does not have to accept the bid if the amount bid is not acceptable.*

*Mrs. Carlson asked Mr. Stow if he wished to withdraw his motion.*

*Mr. Stow said yes.*

**Mrs. Carlson** said the town has already authorized Mr. Span to put the timber up for bid and the town board will review the bids to see if they wish to accept or reject them.

**Mrs. Carlson** asked Mr. Ryan if there are any trees at the highway building that should be looked at for timber.

**Mr. Ryan** said there are a lot of locust trees both large and small.

**Mr. Sena** said he had called three different fencing people to contact Mr. Ryan about the trees and asked if any of them had contacted him.

**Mr. Ryan** said he had not been contacted.

**Mrs. Carlson** said she would ask Dave Span to look at the trees at the highway building.

- **NEW BUSINESS:**

- **ILLEGAL DUMPING SIGN AT TRANSFER STATION – \$250 PER BAG FINE PURCHASED**

**Mrs. Carlson** said on July 4<sup>th</sup>, the transfer station was open from 7-11:00 AM. She said by 3:00 PM there were approximately 500 bags of garbage left there illegally. She said she, Gary and John Penhollow, Penhollow Disposal have been talking about ways to eliminate this problem. She said if we plan to close early on any day we need to give people more notice. She said she did want to make it clear to those using the station that it was not appropriate to do this. She said Mr. Lawson said once people see one bag of trash is left, it is like a signal that it is alright to do the same thing.

**Mr. Thomas** asked if there was some way to avoid closing the dump early. He said it should be open the regular hours regardless of holidays. He said that many summer residents are here on holidays and if it is not published in the Cleveland papers they don't know what the hours are.

**Mrs. Carlson** said it has only been closed early twice this year. She said there had been no problem the first time, but it was a problem this time with the summer residents here.

**Mr. Whitney** said the most effective way to prevent it is to put up gates. He said there is really no way to notify every single user.

**Mr. Sena** said you would have to pay overtime on those days either to the contractor to man it or the highway department to clean it up when illegal dumping occurs.

**Mrs. Thomas** said that although it was short notice, it was published in the Post Journal and on the website. She said she had received numerous calls from local residents about the transfer station hours for the 4<sup>th</sup> of July.

**Mrs. Carlson** said in hindsight it would have been a better idea to keep it open but we didn't do that. She said in the future if there are any differences in hours we will post it at least a week in advance and hand out something so that people know. She said in the future we will try to avoid closing it for any reason.

**Mr. Lawson** said December 25, 2010, will be a Saturday.

**Mr. Sena** questioned spending a lot of money for fencing when this is the only time the transfer station is abused.

**Mr. Ryan** said people have left mattresses, refrigerators, etc. when the station is not manned. He said fence would really take care of the problem.

**Mrs. Thomas** said unless fencing is in place people will continue to go up into the highway area and do whatever they wish. She said perhaps a larger sign board advertising holiday hours, metal, brush collection, etc., placed next to the illegal dumping sign on the front of the highway building would help alleviate the misuse.

*There was further general discussion of solutions to the problem and where to place the sign.*

**Mrs. Carlson** said they had been talking about putting up gates when something was done about the highway building.

**Mr. Stow** said fence would cause problems with the highway employees getting in and out with their trucks.

**TOWN BOARD**

MOTION #111 OF 2009

MR. WHITNEY MOTIONED THAT THE TRANSFER STATION REMAIN OPEN ON ALL SATURDAYS INCLUDING HOLIDAYS, ON A YEAR ROUND BASIS AND THAT OVERTIME COSTS ASSOCIATED BE PAID. MR. THOMAS SECONDED. MRS. CARLSON, MR. WHITNEY, MR. SENA, MR. THOMAS, YES; MR. STOW, NO. **THE MOTION WAS CARRIED BY A VOTE OF 4 YES; 1 NO.**

- **REQUEST FROM PLANNING BOARD FOR A MORATORIUM IN ALL COMMERCIAL DISTRICTS**

**Mrs. Carlson** said the planning board has requested that the town board pass a moratorium on any building in any commercial districts until they complete the comprehensive plan. She said the planning board said it will probably be six months before the plan is complete.

MOTION #112 OF 2009

MR. THOMAS MOTIONED THAT THE TOWN DECLARE A 6 MONTH MORATORIUM ON ALL BUILDING IN THE COMMERCIAL DISTRICT UNTIL THE PLANNING BOARD HAS COMPLETED THE COMPREHENSIVE PLAN. **THERE WAS NO SECOND.**

- **MONEY FROM RESOURCE EXPLORATION**

**Mrs. Carlson** said in 1982 Resource Exploration had posted \$15,000 with the town for road protection in lieu of a bond. This money was to insure any damages to town roads where they were drilling and using equipment. She said the money has been on the town's books and the town has managed the monies ever since.

**Mrs. Miller** said the amount is currently nearing \$38,000.00.

**Mr. Stapleton** said the first step is to determine the correct entity successor entitled to the money. He said we need a dialogue with them and some sort of written confirmation and certification indicating that these people requesting the money are in fact the successors who are entitled to the money. He said he would prefer to have a letter from their corporate council stating he will certify for the town that they are the correct successor by merger, etc. and are entitled to have the monies back. He said at that time it could come back to the board for resolution. He said Mrs. Carlson had discussed some type of reimbursement to the town for the carrying charges of the monies for the past 27 years.

**Mrs. Carlson** said she had called and left a message for Kim Patterson who is their local representative. She said she is not asking for any action by the board at this time but wants to let them know that this is something that will have to be addressed.

**Mr. Stow** asked if they are still doing business in the town.

**Mrs. Carlson** said they are not drilling.

**Mr. Lloyd** said they have petitioned the state for permits to drill but the state has held them up.

**Mr. Stapleton** asked if since 1982 there has been any claim on the money.

**Mrs. Carlson** said no.

**Mr. Stapleton** said if the highway department can identify a clear danger to the roads from any projected activity (6 months to 1 year) then that could be a part of the discussion and a modification could be made to the cash deposit and presented for the boards review.

**Mr. Lloyd** said in the past, the superintendent required a cash security in lieu of a bond to insure any damages to the roads would be repaired. He said at the time many "fly by night" companies would drill, damage roads and leave suddenly. He said Resource Exploration had always been a very conscientious company when it came to preserving the integrity of the roads.

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**Mr. Stapleton** said the chapter on this bond should be closed and any future road/drilling issues dealt with by the town when they arise.

**Mr. Lloyd** said he had required a bond from a company that had drilled on Eggleston Hill Rd. and it had been removed when the job was complete.

**Mr. Stapleton** said had Resource posted a bond for the 1982 drilling its maturity would have notified the company and it would have been removed as well.

**Mr. Lloyd** said you can require a bond from contractors using town roads at any time which would give the highway superintendent clear notice and times when work is being done.

**Mr. Gould** asked if they would get just the \$15,000 back.

**Mr. Stapleton** said they would get it all back with the exception of a small carrying fee.

- **CHAUTAUQUA LAKE WATERSHED- Management Plan: CLMC will host 4:30- 7:00 PM Tuesday, August 18, 2009 at Long Point State Park (all are invited to attend)**

- **FORESTLAND PRESERVATION**

**Mrs. Carlson** said she, Mr. Lloyd, Wade Morse and Kim Sherwood had a meeting concerning forest land preservation and what could be done to encourage people to keep their forests.

**Mr. Lloyd** said one acre of wetland can hold 700,000-1,000,000 gallons of water. He said keeping land forested is being encouraged. He said there is concern about large farming parcels being sold and cut up. He said there are concerns that these areas will be largely cleared and developed with land prices going up. He said this can cause watershed problems.

- **SIGNS AT MAPLE GROVE CEMETERY**

**Mrs. Thomas** said currently there are two signs at the cemetery with the new sign positioned directly in front of the old sign. She said Jack Knowlton, Sextant has requested that the town allow him to move one of the signs to the corner of the cemetery on Brook and Rt. 474 with the sign facing the road. She said Mr. Knowlton would also like to clean up and repaint the old sign because it is historically valuable.

**Mr. Stow and Mrs. Carlson** suggested that Mr. Knowlton provide an estimate of the cost for moving one sign and refurbishing the other.

**Mrs. Thomas** said she would contact Mr. Knowlton about the cost estimate.

- **CHAUTAUQUA LAKE SNOWMOBILE CLUB – Steve Vincent**

**Mrs. Thomas** introduced Mr. Vincent and said their club has trails located on Niagara Mohawk power line routes that were previously approved by National Grid and the town (*reference Town Board Minutes 9/13/04; 10/12/04; 11/8/04 and 12/13/04*). Niagara Mohawk has requested that they provide a letter stating no objection from the town with club use of those trails prior to granting their authorization for the club to use the trails.

**Mr. Vincent** said the club does cross Randolph Road in the use of the trails. He said they run many different sections of power lines all over the county and they were required to get permission from all the towns where they operate.

**Mrs. Thomas** said the town had granted the club access to their trails in 2004. She said Mr. Lloyd had been highway superintendent at the time and had agreed to keep an eye on the trails. She said ATV's are excluded from using the trail.

**Mr. Lloyd and Mr. Ryan** said there had not been any problems with the trail use.

**Mr. Stow** asked who owns the land that the power lines are on.

**Mr. Vincent** said initially they had approached the land owners and found that Niagara Mohawk owns a 100' ROW on all power lines.

**TOWN BOARD**

*There was general discussion of trail maintenance and signage.*

MOTION #113 OF 2009

ON A MOTION MADE BY MR. SENA AND SECONDED BY MR. THOMAS THE SUPERVISOR WAS AUTHORIZED TO SIGN A LETTER OF NO OBJECTION TO THE CHATAUQUA SNOWMOBILE CLUB USE OF NIAGRA MOHAWK POWER LINES AS TRAILS PROVIDED AN UPDATED COPY OF INSURANCE IS RECEIVED FROM THE CLUB. THE MOTION WAS CARRIED UNANIMOUSLY.

- ASHVILLE DAY 7/18/09

**Mrs. Thomas** said Ashville Day is this Saturday. She said events include the Parade at 10:00 am; Bike Decorating Contest ages 5-8 and 9-11 years with prizes awarded; BBQ Chicken at the Ashville Methodist Church; BBQ Pork at the Fire Department; lots of other concessions, yard sales, flea market; Llama Club Fireworks; Classic Car and Motorcycle Cruise-In and of course the Bed Race. She said it is always a great time and encouraged everyone to attend.

- ACCIDENT AT BUTTS PARK ON JUNE 27, 2009

**Mrs. Carlson** said a young man had cut his leg on one of the old picnic tables with metal legs. She said all of the tables have been removed and are at the highway department. She said they will be disposed of as soon as she is sure there will not be an insurance claim made. She asked everyone present to make sure to notify us if they are at a town property and notice anything which is amiss.

- REFERENDUM VOTE ON SEWER STUDIES

**Mrs. Carlson** asked the board what they wished to do. She said at this point it would be a town wide expense and the board can choose to hold a Referendum/Special Town Election Vote on this expenditure.

**Mrs. Thomas** said Permissive Referendum petitions had been received on both the Tolman Engineering and Kucera, Inc. portions. She said each petition had 76 signatures. She said using as references the 2009 Town/County Tax roll, assessment roll and Chautauqua County Voter Registration rolls, the following was determined: signatures of registered voters = 25; property owners signatures = 41; and unidentifiable signatures = 10, were received on each petition.

**Mr. Stow** asked who was eligible to vote if a referendum is held.

**Mr. Stapleton** said his understanding is that 35 appropriate signatures based on the last gubernatorial election were needed for a public referendum. He said the statute under article 91 of Town Law says that you have to have qualified electorates signing the petitions and 25 signatures are not enough to force the public referendum. He said under Sec. 94 anytime the board wants to hear from the public on a subject they can pass a resolution authorizing a public referendum. He said it is at the boards' discretion and because it is a town wide charge the persons allowed to vote have to be registered voters or they have to prove they are qualified to be a registered voter by some means of identification. He stated clearly this has nothing to do with the sewer district or infrastructure; it only deals with the studies by Tolman and Kucera. He said that in the case of the sewer district or infrastructure a different statute (Sec. 209) is involved which allows the property owner's (whom ever has the deed in their name) who will pay for the installation and services will vote; it will not be a town wide vote. He said we are not to that second stage; this is strictly the town wide charge for the studies stage.

**Mrs. Carlson** said the town wide charge for the initial studies stage would be \$60,000. She said she does not want to proceed with the expenditure of the monies without input from the voting population of the town's approval.

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*There was discussion of who would be qualified to vote and how this type of special election would be handled.*

**Mr. Stapleton** said he had spoken to the election officials at Chautauqua County who said they would provide both the latest list of registered voters as well as the old voters who are no longer qualified because they have not voted or renewed their status as qualified voter. He said that persons who own second homes and have their primary domicile in other states and vote elsewhere, at least for this initial vote they cannot vote.

**Mr. Whitney** referred to the initial joint meeting in June at which time it was indicated that this first step needed to be taken so that the project would be shovel ready expediently should stimulus money become available.

**Mrs. Thomas** asked if the vote could be done by paper ballot.

**Mrs. Carlson** said she thought so. She said election officials would need to be present to verify the qualifications of prospective voters.

**Mr. Thomas** asked how much it would cost to hold this election.

**Mrs. Carlson** said probably several hundred dollars depending on how long the polls are open. She said it should be done as expediently as possible. She said the town would need to advertise it.

MOTION #114 OF 2009

MRS. CARLSON MOTIONED THAT THE TOWN OF NORTH HARMONY HOLD A PUBLIC REFERENDUM VOTE ON THE EXPENDITURE OF TOWN MONIES FOR SEWER STUDIES BY TOLMAN ENGINEERING AT A COST OF \$30,000 AND KUCERA, INC. FOR A COST OF\$29,235. MR. SENA SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

MOTION #115 OF 2009

MRS. CARLSON MOTIONED THAT THE PUBLIC REFERENDUM VOTE ON THE TOLMAN / KUCERA, INC. STUDIES BE HELD ON SATURDAY 8/15/09, WITH POLLS BEING OPEN FROM 9:00 AM UNTIL 6:00 PM. MR. SENA SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

*Subsequent to this motion it was determined that Town Law Section 91, Referendum on petition states "If a petition be so filed at any other time, a proposition for the approval of such act or resolution shall be submitted at a special town election to be held no less than sixty nor more than seventy-five days after the filing of such petition." The Town Clerk individually and privately polled each board member and the date of the vote was changed to September 12, 2009, by a unanimous decision.*

- **CHILCOTE LETTER OBJECTING THE ZONING BOARD OF APPEALS GRANTING OF AN AREA VARIANCE TO SPINNER AT THE 6/24/09 HEARING (Copy of letter in Minutes)**

**Mrs. Thomas and Mr. Stapleton read into the record the 3 page letter received from Mr.**

**Chilcote.**

**Mrs. Thomas** said Mr. Chilcote had come to the town offices on 6/29/09, to speak about the area variance granted to Mr. Spinner. She said she had provided him with a copy of the application at that time. She said she had asked Mr. Chilcote if he had received the notice of hearing that had been mailed to him on 6/15/09. She said Mr. Chilcote said he had received it on 6/21/09, but did not think the board of appeals would act on it that night (6/24/09). In his letter he requests that the matter be re-heard at the 7/22/09 Zoning Board of Appeals hearing and that no further action be taken until that re-hearing is completed. He requests that the deck be reduced in width from 5' wide to 4' wide.

**TOWN BOARD**

At the conclusion of the reading of Mr. Chilcote's letter Mrs. Carlson asked Mr. Stapleton how it affects the town board.

**Mr. Stapleton** said it does not impact the town board but if there is a request for a re-hearing, he and Mr. Lawson have advised Mr. Wright the Chilcote's attorney that if they want a re-hearing the zoning board can by a unanimous vote agree to do that. He stressed that it has to be unanimous and then you send out notices again for the next month and it can be re-heard and a decision can be made by a majority vote.

**Mrs. Thomas** said it is not on the legal for the hearing notice.

**Mr. Stapleton** said it does not have to be published; it just has to be on the agenda.

**Mrs. Thomas** questioned if a unanimous decision by the full 7 member board was required as it is difficult to seat a full 7 member board at the hearings.

**Mr. Lawson** said we could request a full board but there are no guarantees.

**Mr. Stapleton** said Mr. Chilcote could bring an Article 78 hearing to the Supreme Court within 4 months if he chooses, but he apparently prefers the more inexpensive way of handling it by coming back and asking for a re-hearing before the board. He said that would be better for the town as well.

**Mr. Sena** asked if the Spinner's had received a copy of the Chilcote's letter.

**Mrs. Thomas** said no, but she would contact the Spinner's and provide a copy of it to them.

**Mr. Lawson** said he has spoken to Mr. Stapleton and the town is taking care of their end of it and everything has been above board. He said in the letter where Mr. Chilcote speaks about the denial of the permit, it would not have gone to the Zoning Board if the permit had not been denied. He said on many of the permits there may not be a date of denial but if he had not spoken to the applicant and denied it, it would not have gone to the Town Clerk for legal publishing.

*There was general discussion of the distances involved in the variance request.*

**Mr. Stapleton** said in the last 10 years there has only been one occasion where the zoning board has agreed to re-hear a case and that was on the flea market in Stow.

- **REPORTS:**

### **JAY GOULD, LEGISLATOR**

**Mr. Gould** said the following has occurred in the legislature:

- Appointments were made to the Chautauqua Opportunities Governing Board, Chautauqua County Traffic Safety Board, JCC Board of Trustees and Chautauqua County Ethics Board.
- Vote to spend \$204,725 (federal); \$5,388 (state); \$5,388 (local) on taxi lanes at the Dunkirk Airport.
- Voted on resolution to use capital funds in the amount of \$93,000 for Safety Village which will be refunded through grant money. Local share \$32,000 to be replaced by Chautauqua Children's Education Safety Village.
- Voted to pay a farmer rent for 5 years at \$300/year for use of his brine tank to brine roads.
- Voted to allow the use of credit cards for certain persons at the county.
- Voted two new positions at the helicopter service, Director of Aviation and Director of Aviation Maintenance.
- Occupancy tax for \$10,000 for special photo exhibit at JCC will be vetoed by the County Executive.
- On agenda for next month \$30,000 bed tax money for Light the Lakes fireworks; \$10,000 for the air show.

### **RANDY HOLCOMB, ASSESSOR**

**Mrs. Carlson** said she received his report which says that the final assessment roll is complete. She said he anticipates several small claims of assessment and the tentative equalization rate is 100%.

### **TOWN BOARD**

**GARY RYAN, HIGHWAY SUPERINTENDENT**

Mr. Ryan said the highway has been performing general maintenance on roads and equipment. He said both Todd Eddy and Bryan Stevens are currently out of work with serious illnesses.

**HOWARD PEACOCK, JUSTICE (report in Minute Book)**

Mr. Peacock said the court has been very busy. He said the grant application for court security upgrades has been sent and copies have been made of the plans.

**BRAD LAWSON, ZONING CEO (report in Minute Book)**

Mr. Lawson said there are 2 or 3 projects that might be started in 2010. He said he is working on getting the list of violations cleaned up. He said Mr. Hagg was in and had said there would be a sale. Brad said they would revisit it at the end of August. He said he is working on the two (Butts property and Slagle) trailers on Carpenter Pringle Road. He said he sent a violation for the Fardink Road property to the attorney of record. He said Mr. Olson on Butts Road said he would have his property cleaned up by the end of July.

**DAVE LLOYD, STORM WATER PLANNING**

Mr. Lloyd said Rex Tolman has provided drawings for the Stow area project. He said a meeting has been scheduled with Rex and Gary for next Tuesday to do a final walk through. He said he has most of the material quotes but will have to go over the list with Mr. Tolman before placing an order. He said it would take 3-4 weeks for the treatment unit to be made and the rest of the materials should arrive in 1-2 weeks. He said Mr. Tolman informed him that the drawings are almost complete for the Cheney Creek project. He said he has spoken to Rick Constantino about the 2010 grants. He said there were only 20 applicants for the grant funding and we should have a good chance at getting our projects funded.

**NANCY THOMAS, TOWN CLERK (report in Minute Book)**

Mrs. Thomas said she had nothing further to add to her written report.

- MOTION #116 OF 2009  
ON A MOTION MADE BY MR. THOMAS AND SECONDED BY MR. SENA, THE TOWN CLERKS REPORT WAS ACCEPTED AND THE MOTION WAS CARRIED UNANIMOUSLY.

**SALLY P. CARLSON, SUPERVISOR: (report in Minute Book)**

MOTION #117 OF 2009:

MR. STOW MOTIONED THAT THE SUPERVISOR'S REPORT BE ACCEPTED AS PRESENTED. MR. SENA SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

MOTION #118 OF 2009:

MR. WHITNEY MOTIONED TO PAY THE GENERAL FUND BILLS AS AUDITED AND REVIEWED EARLIER. MR. THOMAS SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

MOTION #119 OF 2009:

MR. WHITNEY MOTIONED TO PAY THE HIGHWAY FUND BILLS AS AUDITED AND REVIEWED EARLIER. MR. STOW SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

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MOTION #120 OF 2009:

MR. STOW MOTIONED FOR ADJOURNMENT AT 9:55 PM. MR. SENA SECONDED  
AND THE MOTION WAS CARRIED UNANIMOUSLY.

*Nancy Thomas*  
*Town Clerk*