

**TOWN OF NORTH HARMONY
TOWN BOARD MEETING
MONDAY 11/12/2012 7:00 PM**

SALLY P. CARLSON, SUPERVISOR	PRESENT
RALPH, WHITNEY, COUNCILMAN	PRESENT
FRANK STOW, COUNCILMAN	PRESENT
DICK SENA, COUNCILMAN	PRESENT
DUNCAN MCNEILL, COUNCILMAN	PRESENT

OTHERS PRESENT: Jay Gould, Legislator; Dan Strickland, Highway Sup't.; Dave Stapleton, Attorney; Dave Lloyd, Stormwater Planner; Clayton & Helen Emick; Charlie Cooley; Ernie Russo; Brad Lawson, Zoning CEO; Robin Miller, Bookkeeper; Ted & Mary Parran; Members of Reality Check: Samantha Vanstrom, Toby Sperry, Ben Benware, Laurie Adams; Nancy Thomas, Town Clerk

- **PLEDGE**

- **MINUTES 10/8/12**

- **MOTION #146 OF 2012**

ON A MOTION MADE BY MR. MCNEILL AND SECONDED BY MR. SENA, THE MINUTES OF THE 10/8/12 TOWN BOARD MEETING WERE ACCEPTED AS PRESENTED BY THE CLERK, UNANIMOUSLY.

- **PUBLIC COMMENT:**

- **JOHN PENHOLLOW – PENHOLLOW DISPOSAL**

- **REALITY CHECK PRESENTATION ON TOBACCO MARKETING TO YOUTH**

Samantha Vanstrom, Sr. Program Coordinator, Council on Alcoholism and Substance Abuse and two area middle grade students gave a brief presentation on protecting our kids from big tobacco advertisement. They explained that tobacco companies spend more than \$1,000,000.00 a day gearing advertisements toward youth to create new smokers and explained some ways to prevent this type of advertising. They received a round of applause for their presentation.

- **CORRESPONDENCE:**

1. **TIME WARNER CABLE – Sports Tier increase to \$8.99 & Free Showtime 1/11-13/2013**

2. **ASSESSOR – SEPTEMBER PROPERTY TRANSFERS**

Mrs. Carlson commented that this is the first month in which sales were all above assessed value.

3. DISTRICT ATTORNEY – DAVID STAPLETON AS ASSISTANT DA FOR TOWN OF NORTH HARMONY
4. NYS-ERS – Estimate of Retirement \$81,240

TOWN BOARD
11/12/12 (Pg. 2)

5. M&T BANK - COPY OF TRI-PARTY SECURITY AND CUSTODIAL AGREEMENT
6. NYMIR – INSURANCE VALUE FOR TOWN BUILDINGS
7. MARY ANN STRAND – LETTER RE BOOTY BAY PROJECT

• **OLD BUSINESS:**

• **ADOPT 2013 TOWN BUDGET**

Mrs. Carlson explained that the items in the budget over which the town has control will result in a tax rate of \$2.40/\$1,000 (same as 2012). She said the addition to the budget of Workman’s Comp as required by the county at an additional amount of \$.21/\$1,000 will make the rate \$2.61/\$1,000 for 2013. She explained that the Workman’s Comp had originally been on each tax bill as a chargeback amount.

Mr. Sena asked about the inclusion of the Bly Hill Project in the budget.

Mrs. Carlson said it shows as both a revenue and expenditure so it will zero itself out. She said we hope to see the grant funds this year but it has to be included for 2013 in case funds are not received until then.

Mr. Lloyd said the town can predict what it will do on its end but cannot predict what the county will do on its end.

• **MOTION #147 OF 2012**

ON A MOTION MADE BY MR. WHITNEY AND SECONDED BY MR. MCNEILL, THE 2013 BUDGET FOR THE TOWN OF NORTH HARMONY WAS ADOPTED IN ITS ENTIRETY. THE MOTION WAS CARRIED UNANIMOUSLY.

• **OLD HIGHWAY BUILDING – BIDS FOR ASBESTOS REMOVAL AND DEMOLITION**

Mrs. Carlson said the following bids had been received for asbestos removal at the old highway building:

<u>Company</u>	<u>Address</u>	<u>Bid</u>	<u>Notes:</u>
Enviro-Tech party	P.O. Box 29 Victor, NY 14564	\$10,800	Does not include third air monitoring and analysis (no Waiver incl., no Liability Ins.)
Arric Corporation	5033 Transit Rd. Depew, NY 14043	\$ 8,400	Does not include third part air monitoring and analysis (no Liability Ins.)
Regional Environmental	3695 Pine Ave.	\$8,450	“

Demolition, Inc.	Niagara Falls, NY 14301		(no Liability Ins.)
Stohl Remediation Services	4169 Allendale Parkway Buffalo, NY 14219	\$7,260	"

Mrs. Carlson asked Mrs. Thomas if the bid specifications had included certificate of liability insurance.

TOWN BOARD
11/12/12 (Pg. 3)

Mrs. Thomas said yes. She said she is sure the bidders have Liability Insurance; they simply did not include the certificate.

Mrs. Carlson said the town had received one late bid on 11/5/12, in the amount of \$4,500 from John Rauh.

Mr. Sena suggested that it be put back out to bid and the town request in addition, proof of Workman's Compensation.

- **MOTION #148 OF 2012**

MR. SENA MOTIONED TO RE-BID REQUESTS FOR REMOVAL OF ASBESTOS AT THE OLD HIGHWAY BUILDING AND TO REQUEST PROSPECTIVE BIDDERS PROVIDE PROOF OF WORKMAN'S COMPENSATION. MR. MCNEILL SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

Mrs. Thomas asked if the bid request should include third party air monitoring and analysis.

Mrs. Carlson said yes.

Mr. Lloyd said he believes if they are a single person operator, they do not require Workman's Comp.

Mr. Lawson said they would still need to provide an affidavit stating they do not require comp under the NYS Department of Labor.

Mr. Sena said we should still require the Workman's Comp.

Mrs. Carlson asked Mr. Strickland if he had any comment about the demolition.

Mr. Strickland said the Highway Department is willing to do the demolition after the asbestos abatement is completed, so there is no reason to re-bid that.

- **NEW BUILDING**

Mr. Strickland said things are coming along with the new building. He said Mr. Lawson will be doing an inspection tomorrow morning.

- **SCHEDULE PUBLIC HEARING ON PRIVY LAW**

- **MOTION #149 OF 2012**

MR. WHITNEY MOTIONED TO SCHEDULE A SEQR AND PUBLIC HEARING FOR 12/10/12, AT 7:00 ON A PROPOSED LOCAL LAW AMENDING THE ZONING ORDINANCE TO INCLUDE SECTION 639 – PORTABLE TOILET AND PRIVY MANAGEMENT. MR. SENA SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

- **FIRE DISTRICT LAND IN ASHVILLE – Transfer to Town of North Harmony**

Mr. Stapleton said we have agreed with the title company on the six legal descriptions for the properties and he has created the deed. He said that will be delivered to the Fire District Commissioner for signature and then they will return it to the town. He said at that point a couple of tax forms will have to be signed by the town and it can be filed.

Mrs. Carlson explained that the Commissioner's of the Fire District are giving the town the properties along Goose Creek so that the town can do some creek bank restoration through grant funding that may be available to the town. She said the land will become part of the town's park system.

TOWN BOARD

11/12/12 (Pg. 4)

- **MAPLE GROVE CEMETERY TREES**

Mr. Stow said all the trees have been removed and Mr. Post did a very good job. He said Mr. Post has given the town a quote of \$1,999.00 to remove the stumps at Maple Grove, Bly Hill, and Wild Rose Cemeteries and Veteran's Park. Mr. Stow said there is another maple tree at Maple Grove that appears to have dead center and that will need to be looked into.

- **WINONA DRIVE ROW AT CONNELLY PARK**

Mr. Stapleton said the deed has been finalized and it will be recorded tomorrow. He said this will essentially make the ROW public property for public purposes, primarily for storm runoff and drainage issues that have been in the works for several years.

- **LETTER REGARDING DOCK ON VICTORIA ROAD ROW**

Mr. Stapleton said the letter to the owner of dock had been mailed on Friday.

- **NEW BUSINESS:**

- **HOSPICE TREE AT COMMUNITY BUILDING**

Mrs. Thomas said the town had been invited by Hospice to sponsor a Hospice Tree of Life. She said this would involve the town purchasing a tree and putting lights on it. Also the town would sell bows provided by Hospice to people wishing to honor or remember someone and the funds from the sale of these would go to the Hospice organization as a donation for the program.

Mrs. Carlson and all present said it would be a nice addition to our holidays.

Mr. Stow agreed to help with the project.

- **BOND RENEWAL FOR BOCES ROAD PUSH**

Mrs. Carlson said this Bond is paid for strictly by BOCES and is for the road push for their sewer.

- **MOTION #150 OF 2012**

MR. STOW MOTIONED TO AUTHORIZE THE SUPERVISOR TO MAKE PAYMENT ON THE \$136,000.00 BOCES ROAD PUSH BAN IN THE AMOUNT OF \$10,016.36 PRINCIPAL AND \$4,503.64 INTEREST DUE ON 11/30/2012. HE FURTHER MOTIONED TO RENEW THE BAN IN THE AMOUNT OF \$125,983.64 AT AN INTEREST RATE OF 3.23% WITH PAYMENT DUE

ON NOVEMBER 29, 2013. MR. SENA SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

- **CHAUTAUQUA LAKE SNOWMOBILE CLUB – REQUEST TO CROSS TOWN LANDS**

Mrs. Carlson said we received a request from Chautauqua Lake Snowmobile Club to cross town lands. She said the town had done this previously and it involves crossing town lands to get to the snowmobile trails. She said we had participated in the agreement in the past and she would get a map so the board can see where the trails cross town land.

- **MOTION #151 OF 2012**

MR. WHITNEY MOTIONED TO AUTHORIZE THE SUPERVISOR TO ENTER INTO AN AGREEMENT ALLOWING THE CHAUTAUQUA LAKE SNOWMOBILE CLUB TO CROSS TOWN LANDS FOR TRAIL ACCESS. MR. STOW SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

TOWN BOARD

11/12/12 (Pg. 5)

Mr. Lloyd suggested that Mr. Strickland's number should be given to the Club as their activities will affect the roads.

- **BOOTEY BAY, LLC DEVELOPMENT – PAUL POTTER, ENGINEER**

Mr. Potter introduced himself and said Bootey Bay, LLC is not requesting to change the zoning of the property (R-5) it owns but is asking for a lot width variance of 100' wide when 125' is required in the R-5 District. Mr. Potter provided a 3 Phase site plan map of the proposed development. *Refer to Zoning Board of Appeals Minutes dated 10/24/12 located at the town's website for plan detail.* Mr. Potter said they are actually decreasing the number of residences at the location as there were 9 cottages on the lakeshore originally and there will be 7 homes when they are finished. There was discussion of using the Power Boat Club as access to the lake for the second row of homes back from the lake (Phase 2).

Mrs. Carlson asked if there is any plan for the Power Boat Club to buy that facility.

Mr. Potter said Mr. McGraw owns the Boat Club but he does not know if there are any plans to sell it. He said a lot will depend on what the town decides on the variance request. He emphasized that the lot sizes are in compliance with Chautauqua County requirements for sewer and water. He said they intend to use rain gardens for stormwater as well as seek advice from the CLA on shore plantings, buffers, etc. for the lakefront. He said they intend to build the road to town specifications.

Mrs. Carlson suggested he speak to the Highway Superintendent about the road. She asked if there would be a turnaround created for emergency vehicles.

Mr. Potter said they would prefer in the long term to use a road that goes all the way through, but provisions will be made for emergency ingress and egress. He provided to the board the subdivision plat approval; Short and Long Form EAF; Special Permit Application.

Mr. Stapleton explained the process by which the application came to the Town Board. He said the matter came before the Zoning Board of Appeals under an Area Variance Application during last month's meeting. He said since it deals with more than 5 residential lots under the zoning law it requires a Special Use Permit and the exclusive jurisdiction for the determination of that is the Town Board. He said the ZBA referred the application to the Town Board who typically refers the matter to the Planning Board for site plan review and recommendation. He said they will work with Mr. Potter over time and determine what is needed

and make their recommendation for or against the application. *There was further general discussion of the process.*

Mr. Sena asked about wetlands on the property.

Mr. Potter said there are 2 areas of wetlands. He said they are going to request a re-study of the one area and the state has agreed to do a trade off in which Castor's has agreed to create a larger wetland to offset the other one at Bootey Bay.

- **MOTION #152 OF 2012**

MR. SENA MOTIONED TO FORWARD THE AREA VARIANCE AND SPECIAL USE PERMIT REQUESTED BY BOOTEY BAY, LLC FOR THE CREATION OF A SUB-DIVISION TO THE PLANNING BOARD FOR REVIEW AND RECOMMENDATION. MR. WHITNEY SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

Discussion:

Mary Parran stated their main concern is for the health of the lake and does not feel the request for 100' lot width should be allowed.

Mr. Potter said research shows that most of the lots on the lake are less than 100' wide and the reason for the request is monetary.

Mr. Sena said in his experience many people will buy 2 lots just to get more lake frontage.

TOWN BOARD

11/12/12 (Pg. 6)

Mr. Russo spoke against allowing the variance. He said he was told Mr. McGraw is going through bankruptcy and asked if he has paid his taxes on this property yet. He said if your taxes aren't paid you should not have the right to submit an application or proposal for a project.

Mrs. Carlson said it is certainly Mr. McGraw's prerogative to not pay his taxes, but when you own a piece of property like this you have to be able to do something with it. She said he has the right to submit proposals to the board.

Mr. Sena said obviously Mr. McGraw is trying to sell the lots in order to gain financial stability and pay his taxes.

Mr. Cooley spoke in opposition of the project.

Mr. Emick said many hours of the Town Board, ZBA and Planning Board had already been spent on the proposed hotel idea for Bootey Bay. He asked if there had been any formal paperwork received for this project.

Mrs. Carlson said yes, that is what we just received here tonight and she has not had time to review it yet.

Mr. Lawson said we have the signed applications and documents which is more than we have ever had before. He said this is only the beginning of the process.

Mrs. Carlson said she understands the concern about non-payment of taxes, but the County has ways of dealing with that.

Mrs. Emick spoke at length about the bankruptcy and whether or not the town should continue to waste time with Mr. McGraw's applications on the assumption that he will pay taxes if the project happens.

Mr. Stapleton said the town does not have the option to disregard the application under NYS mandate and Town Law. He said if the town does not go through the correct process it opens them up to a law suit.

- **PENHOLLOW DISPOSAL, INC. CONTRACT ASSIGNED TO CASELLA WASTE**

Mrs. Carlson said Mr. Penhollow has sold Penhollow Disposal, Inc. to Casella Waste and the town needs to assign the contract it has with Mr. Penhollow to Casella Waste. The contract expires 12/31/13 and will be honored by Casella. She said next fall we will be advertising for bids for the transfer station.

- **MOTION #153 OF 2012**

MR. MCNEILL MOTIONED TO ASSIGN THE CONTRACT DATED 1/1/12 AND EXPIRING 12/31/13, BETWEEN PENHOLLOW DISPOSAL, LLC AND THE TOWN OF NORTH HARMONY TO CASELLA WASTE MANAGEMENT EFFECTIVE IMMEDIATELY. MR. STOW SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

JAY GOULD, LEGISLATOR

Mr. Gould said the following occurred in the Legislature in October, 2012:

- Special meeting 10/18/12, on the County Home. Mr. Rothler who put in a bid of \$16,000,000.00 to purchase the home was there. Resolution was voted on to enter into an agreement with Mr. Rothler for the sale (16 yes and 18 no). Resolution failed.
- Reapportionment voted on 10/24/12, and passed 15 to 9. He said North Harmony will be combined with Ellery. There will be 19 Districts (was 25).
- Mr. Gould is no longer on the DWI Board.
- Rachael Ludwig of Ashville appointed to Youth Board

TOWN BOARD

11/12/12 (Pg. 7)

- Approved Grant for funds of \$51,000.00 for manuals from Corp of Engineers for the Submerged Aquatic Management Program (SAMP).
- Budget meeting held and \$6,000,000 of fund balance used to offset County budget. County share should not be much higher than last year.
- Mr. Gould will introduce a motion at the November meeting on off track betting at Batavia Downs which Chautauqua Co. owns a part of. He said the Governor is going to allow 6 new casinos in NYS, and we would like one at Batavia Downs Race Track. He said last year about \$400,000 was received off that investment.
- Mr. Gould said he introduced a motion to raise the sales tax to 8-8 ¼ %.

DAN STRICKLAND, HIGHWAY SUPERINTENDENT

Mr. Strickland said the new building will be ready to move into in 1 – 2 weeks. He said the new one ton truck will be delivered soon and the plows are ready to go. He said the Carpenter-Pringle Bridge will be done soon.

HOWARD PEACOCK / EVERETT BENSINK, JUSTICE (copy of report in Minute Book)

Mrs. Carlson said Judge Bensink is out of town and Judge Peacock had another commitment. She gave a brief overview of their report.

BRAD LAWSON, ZONING CEO (copy of report in Minute Book)

Mr. Lawson said things have slowed down with permitting. He said the judge has denied a ruling on the motion to dismiss removal of the privy tank in the Wengerd case. He said at this point it will go back to the judge after Mr. Stapleton talks with him.

DAVE LLOYD, STORMWATER PLANNER

Ashville Rain Garden

Mr. Lloyd said he has been mulching the plants and it looks like some new wild flowers have started and will re-seed. He said all the paperwork is finished for that project.

Bly Hill Project

Mr. Lloyd said after a number of rains, the project seems to be operating well. He said there will be some repair work to be done in the spring. He said he is working on signage wording and education outreach information on the project. He said he is anticipating finishing mid-December with all the paperwork.

Next Year Plans

Mr. Lloyd said next year he plans to work on ditches, slopes and roads.

NANCY THOMAS, TOWN CLERK (copy of report in Minute Book)

• **MOTION #154 OF 2012**

ON A MOTION MADE BY MR. STOW AND SECONDED BY MR. SENA, THE TOWN CLERKS REPORT WAS ACCEPTED AS PRESENTED UNANIMOUSLY.

SALLY P. CARLSON, SUPERVISOR (copy of report in Minute Book)

• **MOTION #155 OF 2012**

ON A MOTION MADE BY MR. STOW AND SECONDED BY MR. SENA, THE SUPERVISORS REPORT WAS ACCEPTED AS PRESENTED, UNANIMOUSLY.

TOWN BOARD

11/12/12 (Pg. 8)

• **MOTION #156 OF 2012**

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

• **MOTION #157 OF 2012**

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

• **MOTION #158 OF 2012**

ON A MOTION MADE BY MR. SENA AND SECONDED BY MR. MCNEILL, THE MEETING WAS ADJOURNED AT 8:30 PM.

Town Clerk