

Minutes of October 20, 2008 Town Board Meeting, held at the Germantown Town Hall, Germantown, NY, commencing at 7:00pm

Present: Supervisor Roy Brown
Councilwoman Joan Snyder
Councilwoman Graceann Lamberta
Councilman Jeremy Smith
Town Lawyer, Jason Shaw

Not Present: Councilman Joel Craig

Recorded by: Town Clerk, Charlene Diehl

Supervisor Brown opened the meeting and led the Pledge to the Flag.

Motion to approve the minutes from the September town board meeting, with Councilman Smith's amended language, made by Councilwoman Snyder and seconded by Councilman Smith, with all in favor and none opposed.

Motion to pay audited bills made by Councilwoman Snyder, and seconded by Councilwoman Lamberta.

Supervisor Brown: Aye Councilman Smith: Aye

Motion to go into Executive Session to discuss personnel and legal matters made by Councilwoman Snyder and seconded by Councilwoman Lamberta, with all in favor and none opposed.

Motion to come out of Executive Session made by Councilwoman Lamberta and seconded by Councilman Smith, with all in favor and none opposed.

Motion to return to the regular town board meeting made by Councilwoman Lamberta and seconded by Councilwoman Snyder, with all in favor and none opposed.

Communication - Town Clerk

The clerk read a letter of resignation from Valentina Szachacz and Supervisor Brown requested the clerk send her a letter of appreciation from the board for her work as the Planning and Zoning Board secretary.

Department Updates

Highway Department - reported by Richard Jennings

Mr. Jennings requested permission from the board to hire a bookkeeper for the Highway Department and stated his budget will accommodate this request. He said the salary range will be \$12-\$15 per hour and require two hours per day.

Motion to approve hiring a bookkeeper for the Highway Department made by Councilwoman Snyder and seconded by Councilwoman Lamberta.

Supervisor Brown: Aye Councilman Smith: Aye

- Helsley Road has been leveled and a culvert replaced;
- The docks are out in Cheviot;
- The docks will be coming out at the Anchorage on 10/22;
- Tree branches are being trimmed for winter;
- Installing sanders and wings for snow preparation

Mr. Jennings asked folks to be careful when raking leaves to make sure that the water flows in ditches. He said the town parking lot entrance has been completed and thanked Austin Sullivan as well as everyone else who helped.

Sewer Department - reported by Anthony Cidras

- Preventative maintenance of Pump Station, blowers and UV lights;
- Working on chain-link fence repair;
- Cleaning metal tanks;
- Working with a potential new sewer hook-up;

- Average Daily Gallons - 30,000

Parks Maintenance - reported by Anthony Cidras

- Windows and door replacement on the Activities Building is complete and Anthony thanked Jennings Contracting for the job they did.
- Door on the Quonset Hut repaired for the Police department;
- He worked with the PTSA on the Halloween event;
- The pump at the ball field is not working and a port-a-potty has been brought in until it can be replaced. He believes it will cost from \$1400-\$2400 to replace the pump.
- Dales Bridge project well underway and most of the materials are there;
- Eight new tables have been purchased for the Activity Building and he thanked the Park Commission;
- On October 11th some vandalism occurred at the park; everything has been repaired but Anthony asks everyone to keep their eyes open;
- he thanked Bruce Bohnsack and John Balasz for all their time and help they have donated to Dales Bridge; they have saved the town a lot of money with their assistance.

Police Department – reported by Police Commissioner Roger Rekow

- 147 hours of patrol time was logged.

Parks Commission - reported by Mike George

Mr. George thanked Anthony and George Sharpe Jr. for providing assistance for the Halloween event and thanked the PTSA for a successful event. He said they are looking to have two nites of Halloween activities next year and also thanked Kerry Abella from Palatine Pizza as well as all the volunteers who donated their time.

The next Parks Commission meeting is December 1st and they need volunteers.

Supervisor Brown said he has gotten great reports from those who spoke with him about the Halloween event and everyone looks forward to the expansion next year.

Councilman Smith spoke about the need to have a long-term plan for the parks and improving the facilities and asked Mr. George if he could put together a team of folks to discuss. Mr. George said the plan to put together a 10-year planning committee never got off the ground but he will ask at the December 1st meeting if anyone is interested or get a chair. Councilman Smith said he will contact people to recommend they attend a Parks Commission meeting.

Economic Development Committee – Supervisor Brown said the committee has met and information will be forthcoming during his supervisor’s report..

Re-Zoning Committee – it was reported that after reviewing and interviewing the candidates who responded to the RFP, the committee recommends River Street Planning & Development from Troy to assist in the zoning process, as the committee feels they are well qualified in experience and approach.

300/400 Celebration committees Councilman Smith said the 400th anniversary celebration for Henry Hudson/Champlain/Fulton would be held in 2009, but the committee could not announce the date of the local celebrations, as no schedule for the Halve Moon’s trips up and down the river had yet been announced. The Committee planned a BBQ at Lasher Park with the participation of local organizations.

The 300th anniversary of the Palatine arrival in East Camp in 1710 would be held in 2010, and the centerpiece of the celebrations would be the town’s history. In October there would be a week-long celebration culminating in a new Octoberfest.

Old Business

Police Department Policy manual - Police Commissioner Rekow said all board members should have a copy that Larry Osgood corrected. He said all of Larry’s corrections were grammatical and didn’t change the integrity of the document. He suggests the board approve it with a November 1st effective date.

Verbal resolution to adopt the Germantown Police Department Policy Manual effective November 1, 2008 made by Councilman Smith and seconded by Councilwoman Snyder.
Supervisor Brown: Aye Councilwoman Lamberta: Aye

Supervisor Brown thanked everyone who worked on the Police Department Policy manual and those who sent in their suggestions.

Supervisor Brown said that there had been a public hearing earlier in the evening on the Animal Control local law. Because the law has to be in final form for seven days prior to adoption, the board will plan to adopt it at the November meeting.

Ethics Law – Jason Shaw received comments on the law, which was drafted by an associate and reviewed the law very thoroughly and cut out some unnecessary language – he significantly reduced the role the Ethics Board plays as the model used was intended for a large metropolitan area. He said the edited draft is significantly shorter and takes out complex procedural issues which he said could potentially cause problems in the future. Because of these substantial changes, he recommends the board review the document and schedule another public hearing before adopting it.

Supervisor Brown and the board set the public hearing on the review proposed Ethics Law for November 17th at 6:00pm, prior to the town board meeting. The new proposed law will be put on the web site for residents to review.

Supervisor Brown said Mr. Shaw had completed research on the Patton subdivision, which was brought to the attention of the Board by Mrs. Aiello. Mr. Shaw said he did some research and explained that the board had received, at last month's board meeting, a lengthy letter from an attorney regarding the Aiello property which is covered by a restrictive covenant. The issue was the maintenance of a bed and breakfast, a business, in this particular subdivision. The issue, as Mr. Shaw understands it, is not with the town's own zoning law or site planner. The issue is purely about a restrictive covenant in deeds involved in the conveyance of the property in the subdivision, which is dated in the mid-1980s. The operative language, or the language that the Aiello's pointed to, was talking about that these covenants may be enforced by Patton of NY Corporation, or the owner of any parcel or by the Town of Germantown or Clermont or any of its agencies, as conditions to the approval of the filing of the subdivision map. They were pointing to commercial establishments that were prohibited in the subdivision.

Mr. Shaw took the language and the deed which is discretionary, in other words it doesn't say the town has to do anything, it says the town may, and then it has odd language at the end that says the town may enforce it as a condition to the approval of the filing of the map. He said the language doesn't make much sense as written, but taking the language for what it is, he went back to the minutes of the Planning Board which issued the approval and read through those minutes and the public hearing and looked at the map that was filed for the subdivision and couldn't find, other than this particular covenant, any other reference to this covenant and no reference to or by the town having any interest in enforcing private restricted covenants. His recommendation is that generally speaking, municipalities are not involved in enforcing private covenants among land owners; that is a real property matter, and covenants are matters that are enforced between private property owners, and involves private property rights and restrictions. There are some municipalities that operate completely on private restrictive covenants among the parties. A town will generally not get involved in enforcing them for obvious reasons; the town enforces its own zoning, it doesn't enforce private property rights among parties and, although this language is in the deed, his reading of what happened when it was approved was that this language was put in the deed, nobody really paid attention to it, and it's stayed there for 20 odd years until now and on top of that the language references the parties may enforce the restrictive covenants, and it also refers that it may enforce it as a condition to the approval, which almost suggests that once it's approved as a subdivision then the right to enforce the covenant is no longer existent; in other words it goes away, and once the map is filed, which it was, and once it was approved there's a question in the way it was written as to whether the town still retains, even if it wanted to, the ability to enforce these covenants and the law is pretty clear if there is an ambiguity or a vagueness in the way a covenant is written, that it's enforced against the party who's trying to enforce it; in other words, the party who's trying to enforce it loses to the party against whom the covenant is being enforced with.

With all that in mind, he recommends that this is not a matter that the town should get involved with. If there's a concern about the uses that are in the subdivision that that concern be addressed among the property owners in the subdivision, which is the whole point of the restrictive covenant - let them address it among themselves, and if someone in that subdivision believes that somebody else is violating it then they have a very clear remedy, take that person to court if they can't work it out.

Supervisor Brown thanked Mr. Shaw for his research on the matter.

New Business

Supervisor Brown suggested the appointment of Mike Lawson as NIMS (National Incident Management System) Coordinator for the town. NIMS is a national incident preparedness system which guides all levels of government in the challenges of emergency preparedness. Mr. Brown said the Sheriff's Department made a presentation to the Board of Supervisors and has implemented NIMS compliance in the county and asked for appointment contacts from those municipalities with police agencies and that the town adopt NIMS as an emergency preparedness response. A resolution adopting the NIMS Policy and Procedures will be needed as well in order for the town to receive any federal funding.

A verbal resolution to appoint Mike Lawson as NIMS Coordinator for the Germantown Police Department, as a contact person for the Sheriff's Department and the town police, made by Councilwoman Lamberta and seconded by Councilwoman Snyder.

Supervisor Brown: Aye Councilman Smith: Aye

A verbal motion for the Germantown town board to adopt the NIMS System for emergency management control made by Councilwoman Snyder and seconded by Councilwoman Lamberta.

Supervisor Brown: Aye Councilman Smith: Aye

Supervisor Brown said the Cold War Veterans Exemption would need a public hearing to adopt. This is a new exemption law to offer cold war veterans who had previously not been covered. The Supervisor and the board set a public hearing for November 17th at 6:00pm before the next town board meeting.

A verbal resolution allowing the Germantown Police Department to ticket illegally parked cars on school property was made by Councilwoman Lamberta and seconded by Councilman Smith.

Supervisor Brown: Aye Councilwoman Snyder: Aye

Supervisor Brown said that the school board indicated they were passing a resolution last week requesting that the Police Department come onto the school property to ticket vehicles illegally parked in emergency zones and asked the town board to do the same.

Supervisor Brown brought up the Stocks subdivision and said they are looking for a power easement, meaning the town would have to grant an easement for power lines. Jason Shaw said this issue came up unexpectedly and the town would actually have to grant the developer an easement over town property for the power line. Mr. Shaw said this is not usually done, and granting an easement over town property would require a resolution subject to permissive referendum, because the town would be granting something that is forever. He said this issue is new to the Planning Board as well. The subdivision is behind the sewer plant off of Woods Road. Supervisor Brown reminded the board that the town has an easement to get access to the sewer plant through a business and Supervisor Brown is not sure the town can give it.

Jason Shaw said Mr. Stocks needs to come before the town board and make an application, as the Planning Board can't grant an easement. Councilman Smith thinks an opinion from the Planning Board should be taken, as does Mr. Shaw. Mr. Shaw said compensation to the town would be involved as well; the town just doesn't grant an easement, and Councilwoman Snyder asked if this would set a precedent. Mr. Shaw said it would and that it's unusual for a developer to ask for a power line easement. Councilman Smith said he was concerned and would like the Planning Board's decision as well as a lot more information. He is unprepared to make any decision until more information is obtained, and Supervisor Brown said more information will be sought from the Planning Board and he will update Councilman Smith on what has transpired on this issue to-date.

Supervisor Brown wanted to reappoint Frederick Lang to the Assessment Board of Reviews, but Jason Shaw suggested the board hold off until the January organizational meeting since his appointment should begin on the calendar year.

Supervisor Brown said he has been made aware of an ECHO unit request going before the Zoning Board of Appeals for review, to be located on Sharpe's Landing Road. A mobile home replacement request on Northern Blvd is coming up as well; he believes it is grandfathered in, and as long as it's not 50% larger than the current dwelling it shouldn't be an issue. Councilman Smith said that as this could involve where he personally lives he doesn't want to get particularly involved, but wants to make sure that the local residents are advised of the change. Supervisor

Brown agreed and let Mr. Smith know that notification of neighbors is part of the Zoning Board of Appeals process.

Supervisor Brown said he recommends to the board that they pass along resumes for the part-time clerical position for the Planning and Zoning boards to Councilman Craig and Councilwoman Snyder to review for recommendations at the next town board meeting.

Police Commissioner Rekow approached the board regarding approval to replace the transmission in the 2003 Ford Expedition that the Sheriff's Department donated to the town. He estimates the cost to be approximately \$2500. The department plans on selling the two current cars and hopes it will offset the cost of replacing the transmission.

Mr. Rekow said they had received approval on the state grant for a new police car, for about \$31,000. The goal is for the department to have the new police car and the 4WD Expedition.

Motion made to approve spending \$2500 to replace the transmission on the 2003 Ford Expedition made by Councilwoman Snyder and seconded by Councilwoman Lamberta.

Supervisor Brown: Aye Councilman Smith: Aye

Supervisor Brown said they are replacing the fuel management system at the Highway Garage with a new fuel dispensing system, which will allow a breakdown of fuel consumption and allocation. A key system will be used, which the county uses as well, so they can be billed for their use. The cost of the system is \$12,251.83, and Highway Superintendent Jennings anticipates the revenues coming from the sale of the town loader to offset the cost of installing this system.

A motion to replace the fuel management system made by Councilman Smith and seconded by Councilwoman Snyder.

Supervisor Brown: Aye Councilwoman Lamberta: Aye

Supervisor's Report

Supervisor Brown said the Martha Lorenz-Van Allen memorial in the municipal parking was completed and thanked Rich Jennings, the Highway department and the towns of Clermont and Livingston for assisting on paving the lot. Thanks to Anthony Cidras and George Sharpe for their help, and Columbia Landscaping Corp for donating the black mulch and paving stones and picking up the tree for the town. He thanked the town board for the plans and the new sign and Austin for the vision for the memorial and helping coordinate the people and installation of the project. He said the dedication of the memorial would be November 1st at 12:30.

There will also be a grand opening of the art gallery on November 1st at 1:00 at the former piano store owned by Mr. Einhorn and the G-tel will be serving cider and apple donuts as well.

There will be a Planning Board Basics workshop presented on November 17th from 5:00-7:00pm in Cairo, and any Planning or Zoning board members needing to meet their yearly board requirements should attend.

The county applied for and received a grant to study consolidating assessment to a county authority. The study was completed and copies of it turned over to town supervisors last month. A sub-committee has been formed at the county and they are studying the recommendations from CAMA Consultants and will make a recommendation to the County Board of Supervisors sometime in late 2009 as to the direction the county should be moving towards. The Town Clerk will have a copy in her office for anyone who wants to review it.

Supervisor Brown thanked G-Tel, Bruce Bohnsack, John Balazs and other workers from the phone company, Greg and David Fingar and George Sharpe for helping the Economic Development Committee move our business signs on Rte 9G about 100 feet south to a better location. The north sign was moved west about three feet. This was done at NYS Department of Transportation's request.

The next budget workshop will be held on October 23rd at 6:00pm and the public hearing is scheduled for November 7th at 6:00pm.

The town board received recognition from the Reality Check organization two weeks ago at a dinner held in Leeds. Councilman Craig attended on behalf of the board.

Open to the Public

Mike George, speaking as Cub master, thanked the town for their support of a breakfast held recently and Anthony for his assistance. They raised \$784 and Mr. George said over \$1600 has been raised for the kids and \$400 was spent on park donations.

Dorothy Montague stated her concern about the current dog warden, as the last incident regarding a dog she was involved in the warden didn't respond to her. She said the county humane society had to be called and the town is paying for services that are not being provided. Councilwoman Snyder requested that Ms Montague send a letter to the town board relaying what had happened. Supervisor Brown said he would look into the matter.

Sally Drummond reminded the board that the Parks Commission planning and Re-Zoning issues are both addressed in the Comprehensive Plan and urges the board to consider passing it.

Motion to adjourn the meeting made by Councilwoman Lamberta and seconded by Councilwoman Snyder, with all in favor and none opposed.

Respectfully submitted,