

**TOWN OF DEERPARK
TOWN BOARD MEETING
MONDAY, AUGUST 31, 2009**

Meeting was held at Town Hall, 420 Route 209, Huguenot, New York 12746

Attendance:

Supervisor: Gary Flieger

Councilmember's: Viola Sinsabaugh, Karl Brabenec, Gary Spears and Liam O'Neill (7:20PM)

Attorney: Bill Onofry

Call to Order 7:05PM

Motion to enter Executive Session 7:05PM

Motion made by Gary Flieger, 2nd by Gary Spears, to enter Executive Session for the purpose of conducting an interview for the Planning Board with Mr. Jim Harrington.

VOTE: 4 AYES Gary Spears, Karl Brabenec, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Motion to end Executive Session 7:40PM

Motion made by Gary Spears, 2nd by Karl Brabenec, to end Executive Session and re-enter Regular Session.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Moment of Silence for Honorable Judge Anthony Tufano

Discussion on Hazard Mitigation Meeting:

Gary Flieger: One of the things that was just brought up was a meeting that we have had, a memo that was given to us from the Attorney on a meeting that was going on, what that is, and I know there's questions, is this particular committee is on a very tight time schedule. All board members are members of that committee, when we voted it in it was voted in as board members, it has a very large committee, I didn't know this was going to be brought up tonight so I don't have it all in front of us and it involves the police department, the highway, all the fire departments, the ambulance corp., the County has several different entities involved in here, some nights when we have meetings there's 16 people involved. What happened was we were hoping that this would be treated as the planning board, where we could do it; the letter that we have from Mr. Bavoso comes out and states... **Bill Onofry:** Mr. Supervisor, the recommendations from our office are just that the town board authorize a public information meeting, if it's the board's desire, a consultant cannot actually set a meeting and cannot authorize the use of a town facility, so if it's the board's pleasure we recommend a meeting for Thursday, September 10th, at 7:00PM, for the purpose of public information on the town's hazard mitigation plan, and the board would most likely benefit from requesting a copy of any information that will be discussed at that meeting, so that way the entire board is informed prior to the meeting, and then the board should also decide whether or not the notice or anything else should be published on the town's website. **Gary Flieger:** Very good, and what happened is we had three board members present at that meeting, I didn't know if Bill understood that and that's why I've been calling since last Friday to try and chat with him and I haven't been able to get through. To begin with, calling for a meeting wasn't done by a consultant, the consultant was asked to put the add together and sent to the town clerk for putting in the paper, it was a vote of the committee, that committee was the one who voted to do that not a consultant. So that's how that came about, we had three board members, all the town board members are members of this, Mr. Hughson is also a member, we have the fire departments involved, it's a committee of many within the town and County, and we all voted to get this thing through. We're on a very tight time schedule and all we asked for was to have it posted on the website and to get it advertised so that we could make a public meeting out of this, and it was in the newspaper. **Gary Spears:** So probably we should just make a motion now and make it official and get it done. **Gary Flieger:** I think so, I'd like that so we can get moving on that, but I think the big thing is we have to look at it on the involvement on this and my question to Mr. Bavoso was we have so many committee's within the town, like the planning board, the planning board holds public meetings without asking the town board about it, why is this committee of a different value and how do we get this committee in that same stature so that it can move forward without having to wait two weeks for permission to go into a public meeting. **Bill Onofry:** Well, first of all, the planning board has specifically been delegated the authority by the town board, that's actually and action that was taken and set forth in the local laws of the Town of Deerpark, so therefore they have the right to set public meetings and use public facilities without asking permission; the same goes for the zoning board of appeals which is actually mandated by the State of New York to exist; so when it comes to this committee, the fact that this committee exists and the committee has work to do, that's one thing, but when a Town Board member sits on that as a committee member it is different than taking action as a town board member, the fact that the town board members may be active members of a committee does not mean that the town board can make decisions as board members at committee meetings, it'd be a violation of the open meetings clause and the intent of the State Legislature. I just think that to clarify things going forward then the board may want to make a resolution that the committee can set meetings or use public facilities as necessary, but I think up to this point that step has not been taken by the board and I think that was Mr. Bavoso's position, not necessarily that you can't do it, it's just that there's a way to do it.

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Motion to approve use of Town Hall

Motion made by Gary Spears, 2nd by Karl Brabenec, to approve the use of the Town Hall on September 10, 2009 at 7:00PM, and to receive the information that they are going to put out that night.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Discussion with Judge Osowick:

Gary Flieger: Laurie, could you bring us up to speed on where you are today, I know we chatted earlier.

Laurie Osowick: I'd like to say that this is one of the hardest things I've had to do. I talked to the resource center three times today trying to get everything settled and what they advised me of is two options that the board would have, the first option is to have me take over for the rest of the year and January 1st when the new elected Judge comes in then we can share the work load again; the second option is for the OCA to pick somebody to fill in for Judge Tufano until the new person comes in to effect January 1st. That's up to the Board. Viola Sinsabaugh: It's a difficult time, but what is your feeling on the next four months? Do you feel that you could handle this, both positions, until the new year? Laurie Osowick: I think if it's just for four months I could do it, as long as I can keep Gina Tenke, and then I would have two clerks, and that would be, I think, definitely the way in order for me to be able to survive the next four months, is to have two clerks, I would keep my clerk Mary Lou, and have Gina come in and help. Liam O'Neill: They would be coming in on alternate days?

Laurie Osowick: Or they can come in on the same days because I do have two computers, or maybe Mary Lou can do 8-12 and Gina is more of an afternoon lady and she could like 12-3 or something, but I would have to work that out with them, but I do have two working computers now, before we only had one computer but now I have two so I could have two clerks working at the same time, it would be hard for the next four or five months but I could do it if I could keep the two clerks.

Viola Sinsabaugh: I would like to see you stay on and do that, in my own opinion, I feel you have two very confident clerks there and as long as you feel you could do that.

Motion to have Judge Osowick take over for Judge Tufano

Motion made by Viola Sinsabaugh, 2nd by Liam O'Neill, to have Laurie Osowick take her position plus that of Judge Tufano, and have the two court clerks stay on, and for the compensation and pay to be adjusted accordingly for Judge Osowick, until January 1, 2010.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Discussion on Proposed Local Law regarding Parking:

Gary Flieger: We have two local laws and what we're going to do tonight is introduce them, it's a workshop more than anything else. One of the local laws I'd like to talk about first has to do with parking. What that is all about is we do have a parking law in place, it's right a State Law, what we're looking to do is make it a Town Law, we have handed out numerous parking violations, especially up in the #2 Bridge area and the State is getting the money. I think the last time we brought this up was the amount of the fees or fines and I think it's 0-\$150. Gary Spears: Just to clarify we also have a Local Law #7-2000 regulating parking on the streets and highways within the Town of Deerpark, can't we just amend that with this, or are we going to have a new law? Gary Flieger: The Law you're talking about I believe is a part time law that has to do with just the winter time so we don't have parking on the streets during the winter. I asked Mr. Bavoso to look into it and what he brought up to my attention was we already had one law in effect that it just effects winter time parking and this will be in addition to it. So I'd like to set a public hearing for our next meeting, which would be the 14th.

Liam O'Neill: I think we need to have it amended to include the fines, 0-\$150, what do we to say? Gary Flieger: I think we want to keep it the same. Gary Spears: Mr. Onofry should we add that in the Local Law, the rates of 0-\$150? Bill Onofry: We can.

Liam O'Neill: The amount to be determined by the Judge? Gary Spears: Well the Judge determines the amount.

Bill Onofry: It's always discretionary in the eyes of the Justice, it would not be improper to have the language in the law, so we can modify it accordingly to take the language from the Local Law #7-2000 and put it in the Local Law of 2009.

Motion to have a public hearing

Motion made by Gary Flieger, 2nd by Gary Spears, to have a public hearing on the proposed Local Law with regard to parking, on September 14, 2009 at 7:00PM.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

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Discussion on Proposed Local Law regarding 2-Lot Subdivision and Recreation Fees

Gary Flieger: The second law that I'd like to introduce is a 2-lot subdivision, basically what this is, is we already have on the books what they call Rec. Fees, Rec. Fees is established to reimburse the community for development, is what the main reason for it is. If you have a larger development that comes into the town you expect to get a lot more young people, a lot more use of parks, therefore you have to develop these parks to handle those kids, whether they go to a little league program, a pop warner football program, I feel it's the town's obligation to provide some space for them to practice and hold these games. What we have is the little subdivisions, which is a mom and pop 2-lot subdivision, where you have the parent parcel of property they subdivide off to a neighbor, a friend, one of their children, that is also under the current law open to a \$1,000 Rec. Fee, we've had that happen a couple of times in the town and I just feel bad that these people don't really have it, they're dividing this off for their children and I would like to see them exempt from it; I know other town have it where they're exempt, it doesn't create a major impact on our community or our recreational facilities, so what I did was I asked Mr. Bavoso to put together a 2-lot subdivision exemption, and I'd like to open this up to discussion before the board to see if the language is right, whether or not we change it before we decide to open it up to a public hearing or what not.

Gary Spears: At the last meeting when we set the workshop you were going to check with both the recreation commission and the planning board for their input, do you have their input tonight? Gary Flieger: I had a discussion with the recreation commission, that person is standing right here, and he is against it. I did not bring it before the committee; I talked about it with Jerry. Gary Spears: If we do anything we're going to set a public hearing on it anyway, we would appreciate the input from the recreation committee, and also I think we asked for the planning board's input too. Gary Flieger: I did mention it to Skip. Gary Spears: Because we should get input from both of those committees before we do anything, because it's going to affect both of them in their course of operation during the year. And then if there's any more discussion I'll just voice my opinion that I voiced at the last meeting that I think it's going to create a problem tracking through different subdivisions; the example I used at the last meeting was a 16 acre piece divided into 2 eight acre pieces and no recreation fee paid, then two years down the road future owners a the two 8's divide them into 2 4's, separate owners no recreation fee paid, four years down the road two 4's divided into two 2's still meet the zoning and no rec fees paid, the problem is tracking this without a deed restriction which I don't feel that we should be putting on anybody's deeds, so I think we have to address that as a board so we don't open ourselves up to litigation in the future. Viola Sinsabaugh: It's a very good point. Gary Flieger: It's a very good point because we've never tracked rec fees, even though we've been imposing them, the way it was done before I came into office was it was attached to the building department with the building inspector attaching them to the building permits, and when I got in here I wanted to know how many open rec fees do we have in there, how many thousands of dollars is sitting in there that is ready for us to collect, it was impossible without going through all his files one by one; what he does is in his office he has a file for each parcel of property in the town, I think there's 4,000 and change, and what he does is when a rec fee is due to the building permit he puts it in there so if you come in and ask for a building permit and it's for lot 50-50-2 he opens that file up and there should be a note in there that rec fees are due and we still have them in there since the law was written and they are still not collected because nobody got a building permit for that, so it's impossible for us to do that. What we did was we changed the law so that we could keep track of that, now it's the developer's obligation to pay those rec fees up front. Liam O'Neill: You mean by that upon subdivision? Gary Flieger: Correct, when the subdivision is signed, before the subdivision is signed, what happens is the planning board collects those rec fees up front before it's signed and okayed, this way here I can keep track of them, we know exactly where it's at, it has nothing to do with the lot being built out, we've had subdivisions come in, the people looking to build a house, they've marketed it out, they've got their loans in place and now they're hit with an extra \$1,000, the developer has already made his nickel and now the home owner is burden with that when he gets the building permit; so we took those surprises out of there when we changed the law. I'm just now trying to get this down so that the individual who's had parcels of property in this town for a long time and would like to give their kid a parcel of property that they are not burdened with this fee up front, that's what this was meant to do, hopefully we can come up with the language that's going to do it and I think Gary has a very, very good point of this tracking of the fees, we do have some language in here that prevents that from being a legal maneuver, believe me this is something that Mr. Bavoso has been working on with me for at least 6 – 8 months. Liam O'Neill: I think the only language in here that attempts to do that is the line about, 'all parcels and real property currently designated on the official tax map of the Town of Deerpark on January 1, 2009', so as I voiced last meeting that alone does not do the job of tracking it because 10 years forward 2019 we would have to be looking at the 2009 tax map, and that seems... Gary Flieger: It's not the tax map or a deed change that would refer to that, the tax map is wrote up from your deeds. Liam O'Neill: The tax map is drawn from the deeds because the deeds have language about lines and boundaries. Gary Flieger: Right so if there's any deed changes that pertain, other than ownership, passed 2009, the planning board would be flagged, I'm going to check on that to make sure how that's done. Gary Spears: The problem with that without a deed restriction is the change of ownership one or two times before a home is actually built on it, what you're saying is the last buyer is going to have to pay this fee? Gary Flieger: No, whoever subdivided the lot. Liam O'Neill: As long as they subdivide it into more than two parcels. Gary Flieger: Correct. Gary Spears: But if you're not subdividing a lot for building why would you have to pay a recreation fee? Gary Flieger: Because it has to do with subdivision, it has nothing to do with.

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Gary Spears: Well you subdivide property for other reasons other than building so therefore a recreation fee on those would not be applicable. Gary Flieger: Right now we are doing rec fees on any subdividing of a lot, it has nothing to do with the purpose of that lot, whether you're building on it or not. Gary Spears: I don't think that's what the law says. I think we should clarify it, it's not how I read it, actually the law I have I must not have the amendment you put in because the one I have says at the time of issuance of building permits the applicant shall pay in addition to such other fees that may be due the recreation fees in the amount of \$1,000 per permit issued. Gary Flieger: That's the old law that we changed because that old law only refers to the collection of those fees was only collected when the building permit was issued.

Karl Brabenc: Read the paragraph before that Gary, on the collection of fees, so it's based on building. Gary Spears: Gary says there's a new law, I'm not arguing that point, there may be I haven't seen it, so we'll need to get that for the next meeting if we pursue this. Viola Sinsabaugh: Okay, we should get all that information and then take this up again. Gary Spears: Right, and also get information from the recreation committee and the planning board. Bill Onofry: I just want to clarify something to the board, the way that the local law is currently written there is no grounds for discriminating between mom and pop and any other owner within the Town of Deerpark. I just wanted to make sure that the board is aware of that.

Discussion with Town Engineer:

Gary Flieger: What we're doing here now is we have Mr. Fusco here to talk about the stimulus package.

Al Fusco: Thank you Mr. Supervisor and Board Members and residents; I'm happy to say and to congratulate you because you have been deemed eligible for a \$500,000 stimulus package grant, in fact as of last Thursday we received permission to actually go to bid. One of the things the Supervisor said is that it was rather difficult to meet all the hurdles because they change the rules not once a week but twice a week, but we were able to get through that with your assistance, you passed all the necessary resolutions to allow us to proceed. I need to congratulate you again because you are the only township in Orange County to receive a stimulus package appointment at this time, there's only one other town, the Town of New Windsor, and they're quite far behind you and it's a totally different project, so I do need to congratulate you, you and the County of Orange itself are the only two that have received any paving money. This project was put forth after discussion with the Highway Superintendent as to what road needed the most extensive repair and we came up with a section of Peenpack Trail, we're going to be able to resurface at least one and a half miles of Peenpack Trail, hopefully we can get it in this construction season, we do have limitations on the bidding; I would recommend we have the bid out for 30 days, or at least three weeks, and move forward in that regard. The grant is again for \$500,000, at this point we have contracts before you I sent over one set to you and to the town attorney because both the Supervisor and the Town Attorney need to sign the documents, I have the eight original documents here with me, so when and if you pass this that will move forward towards completion of the grant; you sign it, they've already signed it, and basically we set this whole thing in motion. The plans and specifications that we've prepared were approved, as the Supervisor said, we had to change it very often, some of it was a little more difficult towards the end, we had to go with a higher asphalt content, it's called super pave, instead of regular pavement, either that or we would have had to test it, whatever blacktop plant we used, which would have cost far more than buying the more expensive blacktop; so as time went on the things changed, but as I stated last week we received notice from them that we are authorized to go to bid. Towards that end there's quite complicated reporting requirement that are conditioned upon the grant approval, those include weekly reports back to NYSDOT and Federal Highway Administration, on to basically each and every employee that works on the job, both whether it be the consultant and the inspector, the guy shoveling blacktop, the guy driving the truck, whatever the case may be, basically since it is a jobs bill if you will, they want to know who got employed and for how much and when and for how long, so that all these statistics can be put together to see if that stimulus package did the job it was purported to do. Just to refresh everybody's memory this is a reimbursable program, we can submit it every 30 days, every 30 days we submit for reimbursement of what those costs have been identified in the weekly reporting periods, and there's special federal forms that need to be filled out, special certifications for the material and the installation of the material, so it's all fairly complicated. In the grant, what was proposed was \$455,000 for blacktop, \$45,000 for inspection fees, towards that end we had put in that since you had hired me as town engineer to a competitive process which was through interviews with several other firms, and it has been within the last three years we are eligible to proceed on that basis and try to get the inspection fees eligible out of the \$500,000, so far they have not yet approved that, they have had some question if it met the federal requirements. To meet the federal requirements the procurement is about a six month procurement which obviously we had 120 days to do it so you can't meet a federal procurement to make sure that the inspection fees are grant eligible; towards that end we did find a niche in it, that if you had hired the engineer through a competitive process and he is a town engineer and not just a consultant that that could move forward, so we are proceeding with that, but at this point they have not yet obligated that \$45,000 towards that end. However that does not change your grant, your grant is still \$500,000, the obligation may switch however from the federal government to the town to provide that \$45,000, but you still get the \$500,000 so it isn't like you lose that, it means we could pave a little further. As I so stated we do have to turn this money over so for example for \$500,000 we probably, I would recommend borrowing \$200,000, and we'll do this in 3 installments with the contractor, so in other words we'd start off, we'd pay \$100,000 a month and outlay that money and then get reimbursed as we move along, reimbursement is supposed to be every 30 days so I don't think we have to obligate the entire \$500,000, but you may need to be prepared for that just in case the Federal Government does not come through promptly with the resources, because a paving project moves along a lot faster

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than some other projects. So that's basically it, at this point the monies that were expended at this date are not grant eligible, any of the preliminary monies that were put forth and we billed that out on an hourly basis, I've had discussions with the Supervisor and we're willing to minimize that as much as possible with the understanding that we are getting the inspection work, I have agreed to limit that and we will make good on that offer, so basically we have two things before you, one is your acceptance of the grant award from New York State and the Federal Government, which needs positive action, I would suggest that we put that on the front burner, and behind that would be the hiring of our firm to do the inspection, we'll continue to try to get it grant eligible, if we aren't that money still goes towards the town and we can pave some more and we'll have to be resourceful as to where that other funds can come from, so that's basically it, again congratulations on the grant. You're the only Town that has received that, you should be proud of yourselves and I'm available for any questions you may have.

Motion to authorize signature of contracts

Motion made by Gary Spears, 2nd by Karl Brabenec, to authorize the Supervisor and the Town Attorney to sign the contracts for the Peenpack Trail Paving Grant.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Motion to have a special meeting

Motion made by Karl Brabenec, 2nd by Viola Sinsabaugh, to have a special meeting on Wednesday, September 2, 2009 at 12:00PM at the Town Hall for the purpose of a Resolution regarding the Grant on Peenpack Trail as well as setting a date for bids.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Gary Flieger: The only other thing that I have is that I would like to bring up at our next meeting, so it's no surprise, is we are definitely going to have to get a lawn mower, the one we have now is costing us too much in oil, it's about 2 quarts to mow lawn out here. Gary Spears: We talked about it at the last meeting, we have one bid and you were going to get some more.

Gary Flieger: I was going to try. So we've got that and I also have somebody who is a 4H leader and they want to use one of our facilities, they would like to move into the grange when we take ownership of it. Bill Onofry: Mr. Supervisor, one quick thing, our office does recommend that the two matters put before you be scheduled as executive session personnel matters for September 14th, if you would add that to the agenda.

Motion to adjourn 8:50PM

Motion made by Gary Spears, 2nd by Karl Brabenec, to adjourn the meeting.

VOTE: 5 AYES Gary Spears, Karl Brabenec, Liam O'Neill, Viola Sinsabaugh and Gary Flieger

MOTION CARRIED

Respectfully submitted by,

Florence T. Santini
Town Clerk