

MINUTES OF THE JANUARY 13, 2011 MEETING OF THE TOWN BOARD OF THE TOWN OF POUND RIDGE HELD AT CONANT HALL, 257 WESTCHESTER AVENUE, POUND RIDGE, N.Y., COMMENCING AT 7:00 P.M.

PRESENT: SUPERVISOR GARY WARSHAUER; COUNCIL MEMBERS: DANIEL PASCHKES, RICHARD LYMAN, PAUL McCONVILLE AND PETER FALCO  
PLANNING BOARD MEMBERS: STEVE KUSHNER, JOHN BRIA, SAM MYLNAR, ANDREW BRODNICK, PETER EFREMENKO AND JUDY KENNEDY

ALSO PRESENT: TOWN ATTORNEY, JAMES SULLIVAN, ESQ.  
DEPUTY TOWN SUPERVISOR, JONATHAN POWERS  
TOWN CLERK, JOANNE PACE

**CALL TO ORDER:** Supervisor Warshauer called the meeting to order at 7:00 p.m.

**CALL FOR EXECUTIVE SESSION:** None

**ANNOUNCEMENTS:**

The first Supervisor's Forum will be held on Saturday, February 5, 2011 at the Town House from 10:00 a.m. to 11:30 a.m. and the topic will be goals and objectives for 2011.

**MINUTES: Acknowledge/correct/accept minutes of Town Board Meetings on December 2, 2010, December 9, 2010, January 6, 2011 and the Executive Session minutes of December 9, 2010.**

**RESOLUTION #: 37-11**

**Board Action:** Motion by Councilman Lyman, seconded by Councilman Falco, all voting aye on the following:

RESOLVED, that the Town Board hereby acknowledges, corrects and accepts the minutes of the Town Board Meetings held on December 2, 2010, December 9, 2010, January 6, 2011 and the Executive Session minutes of December 9, 2010.

**PUBLIC HEARINGS:**

- Continuation of the Joint Town Board/Planning Board Public Hearing on the T-Mobile application for a cell tower at the Ambulance Corps property in Scotts Corners.

**Board Action:** Motion by Councilman McConville, seconded by Councilman Falco, with Councilman Paschkes recusing himself for this part of the meeting, all voting aye to open the Public Hearing to consider and act upon the T-Mobile application for a cell tower at the Ambulance Corps property in Scotts Corners.

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At the last meeting, we had four (4) potential sites to consider for the location of a cell tower in Town. We asked the applicant at that time to make efforts to obtain leases on three of those sites. The Ambulance Corps site already has a lease with T-Mobile. The Attorney for T-Mobile, Robert Gaudio, Snyder & Snyder, addressed the Town Board regarding T-Mobile's effort in obtaining the leases. He handed out copies of affidavits of Aaron Myl, Project Manager and site acquisition specialist working for T-Mobile and Dana Cleford, Leasing Specialist Contractor for T-Mobile detailing that despite T-Mobile's good faith efforts, the owners of the Oceanus property and the Scotts Corners Market property have been unwilling to enter into a lease agreement with T-Mobile. As far as the site at Scotts Corners Market, that property was looked at back in March 2009 and by May 2009 the Town Board rejected the Planning Board's two site tower plan. When it was brought up again at the last meeting, T-Mobile did reach out to the property owner, Michael Blazoski, to inquire as to his interest in leasing space for the construction of a cell tower. Mr. Blazoski said he would discuss the idea with his partner and get back to T-Mobile. In the mean time, Mr. Blazoski sent an e-mail to the members of the Town Board and Planning Board and awaited their response as to whether or not that site would be a viable option for a cell tower. Numerous e-mails went back and forth and on December 30, 2010, Mr. Blazoski called Counsel Gaudio and said he and his partner have decided to pass on the opportunity because the Town Board would not give definite approval as the selected site for the cell tower. There still had to be a study done to determine whether or not it was an appropriate site. A balloon test would have to be done and an analysis would have to be done. The property owner did not want to spend money on consultants, engineers and attorneys to present something for consideration. Mr. Blazoski was also not willing to accommodate the time restraints. T-Mobile felt that locating a facility on the Scotts Corners Market property is not a feasible alternative.

Peter Avellino, Pine Drive, asked about putting the cell tower at 38 Westchester Avenue, as the owner of that property is willing to sign a lease with T-Mobile. This is a piece of commercial property south of lower Trinity Pass on the east side of Westchester Avenue. Mr. Gaudio said that 38 Westchester Avenue was considered but it was part of the two-site solution (one 80ft. tower and one 100ft. tower). Supervisor Warshauer said that after doing an analysis of a large number of sites, having narrowed this down to two types of sites, one being a site higher in elevation (Hsu property or CH State Holding) and the second being a site on Westchester Avenue in Scotts Corners, it seems clear that the ability to construct a site up on the hill area is not feasible and they are not viable sites. That leaves us with a site on Westchester Avenue in Scotts Corners. There have been a number of sites looked at and they all have pluses and minuses and it comes down to how to make it the "least worst" solution. The only viable site in Scotts Corners is the application for the Ambulance Corps where there is a lease. He feels that we should move forward and evaluate the specifics of that application before us. He is going to ask the Planning Board to look at the specifics and make a recommendation to the Town Board. He would ask that the Planning Board recommend the least intrusive design,

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types of landscaping and make a recommendation on some of the waivers that are required so that the Town Board can give this serious consideration.

Steve Kushner, Planning Board member, feels strongly that the CH State Holding property should still be seriously considered as a site because the owners are willing to have conversation about a lease. He feels that the Town Board will be making a decision that will have a negative impact on the Town for generations. They cannot rush into making this decision. A month ago, there were four sites, and he doesn't see any evidence that these other sites are not viable sites.

Councilman Falco said that we have received affidavits and some Board members have tried to reach out to the owners of the properties, but he asked if there were any representatives from the CH Holding property or Scotts Corners Market property or the Hsu property to say anything different or to say that any of the affidavits are misrepresented. No one was present at the meeting.

Counsel Gaudioso said that Exhibit 2 is very clear that the owners of Scotts Corners Market are unwilling to move forward. He is not interested in signing a lease. Steve Kushner feels that the impact of the decision that the Town Board is being asked to make is such that it requires a lot more definition before we write off what may be a better alternative.

Santo Borsellino, Rolling Meadow Lane, commented on the CH State Holding property. He did a PowerPoint presentation last meeting and said that the Hsu property did not have considerably more coverage than the Ambulance Corps site and CH State Holding property has less coverage. He sees the willingness to move forward in Scotts Corners Market property site but feels that perhaps without the timeline, the owners would be more willing.

John Nathan, 155 Upper Shad Road, said that aesthetics is permissible ground for denial of a permit under the TCA. He said that Scotts Corners Market site is still a viable site and should be considered. It is too important to rush into this decision. He feels that T-Mobile is putting the Town Board on the fence to make a quick decision.

Marty Kremer, Ambulance Corps, said that there is no better alternative site than the Ambulance Corps site. They already have a signed lease and would love to have the revenue.

Councilman McConville said that last meeting someone said "you can ruin a good solution by searching for a perfect solution". This has been going on for three years and over three years technology changes. Sites come up and some are viable and some are not. There has been a very comprehensive and exhausted look at alternative sites and alternative technology. He feels we are down to one viable site, with significant

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disagreement, and we ought to get a sense of agreement with that and if so, proceed with the timeline they agreed to last meeting and have this wrapped up by 2/10/11.

Catherine Nathan, Upper Shad Road, feels that there has been a comprehensive look but certainly not an exhausted look at the Scotts Corners Market site. She feels that they may come to terms with T-Mobile if the time was extended. That is really an artificial deadline.

Supervisor Warshauer said he outlined for the owner of the Scotts Corners Market property what was discussed at the last meeting that the Scotts Corners Market site was a site that had been considered, that there had been discussions with T-Mobile in the past and that the Town Board and the Planning Board collectively have narrowed their thinking down to basically four potential locations, two of which were in the Scotts Corners corridor. We wanted to have the sense by this meeting that they would have an agreement with T-Mobile so that this could be a real possibility going forward. Initially, his response was positive, he started to negotiate a lease with T-Mobile and then he indicated that he wanted the Town Board to take an affirmative position on his site before he would be willing to do any further negotiations. Supervisor Warshauer called him and basically outlined what the process would have to be and he could not, on behalf of the Town, make any representation that his site would be selected. It is one of four sites being considered and there was a lot of support for it, but until the studies and tests were done, he couldn't take an affirmative position. The owner indicated at that point that they were not interested in moving forward.

Daniel Rainford, Upper Shad Road, Ambulance Corps member and Fire Department member, spoke up about the need for cell service in Town. The Ambulance Corps site is one of the least impacted sites. It is fairly easy to get to and the income would help the Ambulance Corps.

Peter Avellino, Pine Drive, said that having the cell tower at the Ambulance Corps site would do more damage to the Town than good. It would destroy the visual site in Scotts Corners. We should not be racing to a decision because of litigation.

Supervisor Warshauer said that - we need cell service in Scotts Corners, the efficient way to accomplish this is with a cell tower, the site should be in Scotts Corners, the Town Board has the power to waive certain requirements and we should focus now on the application before the Town Board which is the Ambulance Corps property and deal specifically with the issues that site presents.

John Nathan asked if the term of the lease can be negotiated to be shorter. His concern is technology being updated and things change. Who will remove the old technology? If there is a shorter lease, we won't be stuck with old equipment. He feels strongly that the

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Town Board considers a shorter lease. Counsel Gaudioso was not at liberty to discuss other leases.

James Sullivan, Town Attorney, said that the only other experience the Town has had with cell tower leases is with the Adams Lane cell site. There was no such time limit put on it. There has been some thought process going forward but we will not focus on that at this point. We are a long way off of setting the resolution. Once that resolution is drawn up, comments can be made at the Public Hearing to accept the resolution.

John Nathan feels that the Town Board should consider some sort of temporal permit to reopen and renegotiate after maybe five years or more. The technology should be reevaluated and the old equipment should come down. We should have the opportunity to revisit it.

Richard Mendes, Peters Lane, is concerned should the technology change. Do the carriers have the right to abandon the old site should they become obsolete or are they obligated to update it or take care of it? He also wondered about setting a precedent if the Town grants a waiver to one outfit, would they have to grant the waiver to another outfit.

Jim Sullivan said that there may be a provision in the personal property lease that the carriers are required to remove the old facility. As far as the power to grant a waiver to one outfit, the Town would not be obligated to grant the waiver to another outfit. Granting a waiver or denying a waiver cannot be irrational, arbitrary or capricious.

Josina van der Maas, So. Bedford Road, heard all about the aesthetic and technical point of view, but she is concerned about the human point of view. It is clear that cell phone service is needed in Scotts Corners but would it deter people from shopping at the foot of a cell tower. If the Town had to choose between the Scotts Corners Market site and the Ambulance Corps site, she would choose the Ambulance Corps site.

John Bria, Planning Board member, asked what the Town Board is looking for the Planning Board to do. Supervisor Warshauer said that the Planning Board should take up this specific issue of the Ambulance Corps site at their next Planning Board meeting on January 27, 2011 and look into the detail of this request and propose how they would mitigate the issues and give a recommendation to the Town Board for their February 10, 2011 meeting.

Jon Powers, Deputy Supervisor, said that Counsel Gaudioso and the applicant were asked to consider all four sites and because they did not exhaust the CH State Holding site, they should make sure the owner is not interested and then the Planning Board can give their recommendation to the Town Board.

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Supervisor Warshauer said that we finally have the representation that has been made and there is strong evidence that the other sites are not available. We should go the next step and look at the Ambulance Corps site. We should see how it can be mitigated.

Councilman Falco said that the Town is not in the business of providing cell service or building cell towers or the utility regulation business. The Town Board and the Planning Board have matters of site plan and zoning control. There are restrictions on what we can do and the authority that we have. We have a law to guide us in the location of cell towers and to insure that the impact of them is mitigated but we can't force an owner of a piece of land or business enterprise to build something in a place that they don't want to or we can't force a landowner to build a cell tower on a piece of land that they don't want to. We can encourage it but we have no authority to enforce it. We have an application in front of the Town Board for about three years; we have encouraged serious and good faith efforts on the part of everybody from the applicant and the owners of various alternative sites to enter into negotiations. Personally, he would prefer a site other than the Ambulance Corps like the Hsu property, but the owners are just not interested. The Ambulance Corps is a viable site, not a perfect site. The Town wants to expedite not obstruct the provision of cell service in Town. We should again reach out and try to get an answer from the CH State Holding property. The applicant has initiated litigation; the Town Board is not being forced by the litigation to reach a decision. The goal is to get cell service into Scotts Corners. He agrees that we should narrow our focus to the Ambulance Corps site.

Councilman Lyman is very mindful of the cost of the litigation. He feels that there is no place in this Town that the cell tower will be acceptable. In the end, we are where we are and we must move ahead and trust that the Planning Board will give their recommendation to the Town Board.

**RESOLUTION #: 38 -11**

**Board Action:** Motion by Councilman Falco, seconded by Councilman McConville, Councilman Paschkes recussing himself, all voting aye on the following:

RESOLVED, that the Town Board hereby agrees to continue the Joint Town Board/Planning Board Public Hearing on the T-Mobile application for a cell tower at the Ambulance Corps property in Scotts Corners on Thursday, February 10, 2011 at 7:00 p.m. at Conant Hall.

**NEW BUSINESS:**

Councilman Paschkes rejoined the Town Board members for the rest of the Town Board meeting.

- **Annual Agreement with the South Salem Animal Hospital, pursuant to the requirements of the New York State Agriculture and Markets Law**

The Town Board has agreed to an agreement with the South Salem Animal Hospital for the purpose of holding and sheltering dogs in accordance with the provisions of the New York State Agriculture and Market Law and in accordance with the provisions of Chapter 39 of the Code of the Town of Pound Ridge. They will give the Town 24 hour access to the facility where the Pound Ridge Veterinary Hospital did not give us that access.

**RESOLUTION #: 39 -11**

**Board Action:** Motion by Councilman McConville, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes Supervisor Warshauer to sign the agreement with South Salem Animal Hospital, pursuant to the requirements of the New York State Agriculture and Markets Law and subject to review by Town Counsel.

- **Recreation Department – requesting authorization to hire summer camp staff**

**RESOLUTION #: 40 -11**

**Board Action:** Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the hiring of the summer camp assistant directors and teen travel camp directors as follows:

**Day Camp Assistant Directors:**

Stephen Muller at a salary of \$3,500 for the season replacing Jill Tatarzewski  
Thomas Jordan at a salary of \$3,500 for the season replacing Lou Angiolillo

**Teen Travel Camp (New and budgeted)**

Jill Tatarzewski as Program Director at a salary of \$5,200 for the season  
Christopher Vizzano as Activities Director at a salary of \$5,200 for the season.

The Travel Camp hires were contingent upon a minimum number of campers signing up to justify filling the positions and running the Travel Camp. All salaries were budgeted in the 2011 budget.

- **Website management- review options for enhancing the Town website**

Steve Conti, IT manager, is requesting approval of the proposal by Aha Consulting to implement a new Town of Pound Ridge website because the current vendor is not fulfilling his agreement. The breakdown costs are:

Site development     \$5,000  
Staff Training         \$1,000  
Annual Maintenance, hosting and support total \$1,800.

**RESOLUTION #: 41 -11**

**Board Action:** Motion by Councilman Lyman, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes Steve Conti, IT Manager to accept the proposal by Aha Consulting to implement a new Town of Pound Ridge website subject to review by Town Counsel. The breakdown costs are:  
Site development     \$5,000  
Staff Training         \$1,000  
Annual Maintenance, hosting and support total \$1,800.

**RESOLUTION #: 42-11**

**Board Action:** Motion by Councilman Lyman, seconded by Councilman McConville, all voting aye on the following:

RESOLVED, that the Town Board hereby agrees to transfer \$5,000 from contingency A1990.400 to Web Technical Assistance A1680.415 to cover the unbudgeted expense for the site development.

**FINANCIAL MATTERS:**

- **Recreation Dept. – requesting approval to refund deposit of Conant Hall**

**RESOLUTION #: 43 -11**

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**Board Action:** Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the following refund:  
Jennifer Wiener, 506 Long Ridge, Bedford, N.Y., four hundred dollars (\$400) for use of Conant Hall on January 8, 2011 for a birthday party.

- **Tax receiver – requesting authorization to refund duplicate payment on 2<sup>nd</sup> half school tax 2010/2011**

**RESOLUTION #: 44 -11**

**Board Action:** Motion by Councilman Lyman, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the following refund:  
CoreLogic, 1 CoreLogic Dr., DFW 1-3, Westlake, Tx. 76262, for Block #: 9822-35, 107 Eastwoods Road, Pound Ridge, N.Y. 10576 in the amount of \$6,132.18 for duplicate payment.

- **Town Clerk -Sale of Cemetery –Plot 237, Section 3**

**RESOLUTION #: 45 -11**

**Board Action:** Motion by Councilman Falco, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Supervisor be and is hereby authorized to sell Town Cemetery Plot #237 site 1 & 2, Section 3 to Dorothy MacLean, 8 MacLean Drive, Pound Ridge, N.Y. 10576, in the amount of \$2,000 for two gravesites.

- **Monthly Reports**

**Receipt of monthly Departmental reports**

The monthly reports have been received for December 2011 and are available in the Town Clerk's office.

- **Pay Bills**

**RESOLUTION #: 46 -11**

**Board Action:** Motion by Councilman Paschkes, seconded by Councilman Lyman, motion carried 4-0 with Councilman Falco abstaining on the following:

WHEREAS, Councilman Falco has audited claims for payment and have reported the same could be paid, Now, Therefore, Be It

RESOLVED, that the Supervisor be and is hereby authorized to pay the following claims for payment provided there are sufficient funds in the account to which a claim may be charged:

<b>GENERAL FUND</b>	<b>G</b>		<b>\$411,718.39</b>
<b>HIGHWAY FUND</b>	<b>D</b>		<b>\$9666.90</b>
<b>PARKING DISTRICT</b>	<b>ST</b>		<b>\$205.12</b>
<b>TRUST AND AGENCY</b>	<b>T</b>		<b>\$115,408.73</b>
<b>CAPITAL</b>	<b>H</b>		<b>\$0</b>

**ADJOURNMENT:** There being no further business to come before the Board, Supervisor Warshauer adjourned the regular meeting at 10:25 p.m.

Joanne Pace  
Dated at Pound Ridge, New York  
January 14, 2011