

MINUTES OF THE MAY 6, 2010 MEETING OF THE TOWN BOARD OF THE TOWN OF POUND RIDGE HELD AT THE TOWN HOUSE, 179 WESTCHESTER AVENUE, POUND RIDGE, N.Y., COMMENCING AT 8:00 P.M.

PRESENT: SUPERVISOR GARY WARSHAUER; COUNCIL MEMBERS: DANIEL PASCHKES, RICHARD LYMAN, PAUL McCONVILLE AND PETER FALCO

ALSO PRESENT: TOWN ATTORNEY, JAMES J. SULLIVAN, ESQ.  
TOWN CLERK, JOANNE PACE

**CALL TO ORDER:** Supervisor Warshauer called the meeting to order at 8:00 p.m.

**CALL FOR EXECUTIVE SESSION:**

**Board Action:** Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye to hold an Executive Session immediately following the Town Board meeting for a personnel matter and legal matter.

**ANNOUNCEMENTS:**

- The next Supervisor's Forum will be held on Saturday, May 8, 2010 at 10:00 a.m. at the Town House with the focus on Traffic Safety Measures.
- The 4<sup>th</sup> joint Town Board/Planning Board Public Work Session on the Comprehensive Plan will be held on Thursday, May 13<sup>th</sup>, 8:00 p.m. at the Town House.

**MINUTES: Acknowledge/correct/accept minutes of Town Board Work Session Meeting on April 28, 2010.**

This will be put on the May 13, 2010 agenda because the Town Board did not have sufficient time to review them.

**NEW BUSINESS:**

**Community Center-Consider request by Recreation Commission for approval of additional consultant costs for plan amendments and to re-bid the project**

At the Town Board Work Session on April 28, 2010, the Town Board authorized Lothrop Associates LLC to repackage, study some alternatives to the mechanical systems and re-bid the Community Center to incorporate a Project Labor Agreement. Since the work session, John Maddocks, Chair of our Sustainability Task Force and the LEED coordinator for the Community Center, had some discussion on the mechanical redesign and how that may impact the NYSERDA grant that the Town has received. Supervisor Warshauer asked what obligations we would have if we don't meet the energy criteria established by the consultant. There is potentially a \$100,000 savings if the re-design they are contemplating for the mechanical system is selected. The Engineers cost to re-design and the mechanical system is \$22,000.00. What other costs could we incur? John Maddocks said that the engineer who did the engineering modeling, the basis for

determination of the energy that we could save on the project, had a fee of \$23,400.00 that NYSERDA agreed to pay the first \$10,000.00 of that and 50% of the balance. The Town's obligation would be \$6,700.00 payable to that engineer. If we meet all the energy criteria that has been spelled out in the outsider's report, then we are entitled to that reimbursement from NYSERDA. Incentives are separated and if any one of the things is not achieved, that one item does not get its incentive. Supervisor Warshauer asked if there is anything in the agreement that says the Town of Pound Ridge would be responsible for the money that NYSERDA is picking up. John Maddocks said that he doesn't see anything in the agreement that says in the event that the Town does not achieve any of the energy savings in the building that we have to pay the NYSERDA contribution. We just won't get the matching funds beyond that. Supervisor Warshauer said that the consultants will have to know that the Town Board wants to achieve the best energy efficient building we can because we can get grants for that, we would have a better building and it would lower our operating costs.

Supervisor Warshauer said that we want to finalize the payments on these fees. We have a bill from AP Construction with the total amount due of \$18,545.00 which includes the \$7,000.00 cost of putting together the bid packages and advertising. The Town Board would like to make the final payment subject to our Town Attorney making sure that the Town would be released from any liability from them. It is our intention to not go further with AP Construction and end our relationship with them. This has also been the recommendation from the Recreation Commission and the Construction Committee.

### **RESOLUTION #: 93-10**

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

RESOLVED, that the Town Board hereby authorizes Supervisor Warshauer to make the final payment to AP Construction for all services rendered in the amount of \$18,545.00 subject to our Town Attorney making sure that the Town would be released from any liability from them.

The second part of this involves the site engineer and Jon Powers, Deputy Supervisor, explained that to date, the cost for the site engineer has been \$178,000.00 for their efforts to help design the building for the Community Center. Of that \$178,000, the Town still owes them \$82,422.00. In addition, the engineer has committed to do all the rest of the work required by him through the completion of the project including: studies and revised construction documents, with alternates necessary for the re-bidding and construction inspection through issuance of the certificate of occupancy for \$18,600.00. The request is to increase the original budget that we had with them to a total of \$196,525.00. The total fee on this project is a not-to-exceed number. Our Town Attorney will work with them to get a final agreement that is clear that this is a not-to-exceed number. We have particularized the subsequent work he is committed to. This amount is all part of the original referendum amount of \$4.5 million.

Councilman Lyman made a motion to authorize the payment to Woodard & Curran and Councilman McConville seconded by the motion. Discussion followed. Councilman Paschkes is not confident that Woodard & Curran will commit to and keep to the dollar amount they agree upon with the Town Board due to past experiences with them. He has reached the limit of his confidence with them. Counsel Sullivan suggested that this discussion be continued in Executive Session. Jon Powers said that he has negotiated the settlement claim with Woodard & Curran and they do understand that this is a fixed price. Supervisor Warshauer said that in good faith, Woodard & Curran have moved forward in working with the architects in putting the packages together. He also mentioned that there will be a signed agreement with them to clearly articulate the scope of the work.

**RESOLUTION #: 95-10**

**Board Action:** Motion by Councilman Lyman, seconded by Councilman McConville, the Board polled and motion passing 4-1, Councilman Falco, aye, Councilman Lyman, aye, Councilman McConville, aye, Councilman Paschkes, nay and Supervisor Warshauer, aye, on the following:

RESOLVED, that the Town Board hereby authorizes Supervisor Warshauer to pay the additional \$82,422.00 requested by the Town Engineers Woodard & Curran subject to the Town Attorney getting an agreement with Woodard & Curran outlining the committed future services, with a clear scope of the work and not-to-exceed fee.

**Request for Special Use Permit for new restaurant, to be located at 258 Westchester Avenue-formerly Emily Shaw at the Inn at Pound Ridge**

On behalf of KKPR, LLC, Lucia Chiochio of Cuddy & Feder submitted an application for a Special Use Permit for improvements to a restaurant at 258 Westchester Ave., Pound Ridge, N.Y. The name and logo of the new restaurant will be changed with no difference to the existing size or design of the sign. There will also be a reduction in the restaurant services and a decrease in the kitchen service hours. Kitchen service will end at 11:30 p.m. rather than 12:00 a.m. as approved in 2007. They will serve dinner 7 days a week and Sunday Brunch. They are requesting scheduling a Public Hearing so that they can move forward. Supervisor Warshauer said that he knows they have already reached out to the surrounding neighbors. He thanked them for being diligent. Counsel Sullivan asked if the fee owner of the land is an entity corporation and is it different or the same as the operating company. It is a Limited Liability Corporation and the operating company will be a separate entity. The Special Use Permit will be under the operating company. Counsel requested to see the corporate documents.

**RESOLUTION #: 96-10**

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

RESOLVED, that the Town Board hereby authorizes the scheduling of a Public Hearing for Thursday, June 3, 2010 at 8:00 p.m. to consider the Special Use Permit for the new restaurant at 258 Westchester Avenue, Pound Ridge, N.Y. 10576.

Counsel Sullivan explained that there is no need to refer this applicant to the Planning Board because they are basically following the same format of the previous owner.

**Open Space Fund-consider language for Resolution to be placed on ballot in November**

The ten year (10 year) acquisition fund for the Open Space Fund will expire this year. The Town Board is inclined to put a referendum on the ballot in November 2010. The Town Board will need to come up with the language for the referendum and schedule a Public Hearing. Discussion took place regarding whether or not to have the referendum and then what the language should be. The Town Board unanimously agreed that it should be put on the ballot but the language was debated. The initial thought was to continue to fund its capital reserve fund from the annual general tax levy for ten years in the amount equal to one dollar (\$1.00) per \$1,000 of assessed value. The other option which was discussed at the Supervisor's Forum when they talked about the Open Space Fund is to phase the amount over three (3) years as follows: \$.50/\$1,000 in 2011; \$.75/\$1,000 in 2012 and \$1.00/\$1,000 in 2013 through 2020. Because of the current financial circumstances and financial times, Supervisor Warshauer said that we should consider phasing it in over the next three years. Councilman Paschkes isn't sure whether phasing it in will have any impact on the support of the referendum. He was reminded that this really isn't the issue tonight whether or not it would get the support of the people. The issue tonight is to decide if it should be on the ballot and if so, what the language will be. It was suggested that both language options be discussed at the Public Hearing.

**RESOLUTION #: 97-10**

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

RESOLVED, that the Town Board hereby agrees to have the referendum for the extension of the Open Space Acquisition Fund put on the November 2010 ballot.

Jon Powers suggested using this opportunity to make a statement that the reduction in the first year in the tax levy for the Open Space Fund can offset the increase in other taxes or employee raises. There could conceivably be a pool of money saved during the phasing of the tax levy on Open Space Fund that can be used for other increases without impacting tax payer increase. We could lessen the tax burden in one area for a couple of years and offset any increases in another area.

**RESOLUTION #: 98-10**

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

RESOLVED, that the Town Board hereby authorizes the scheduling of a Public Hearing on Thursday, June 3, 2010 to consider the following proposed language for a referendum regarding Open Space Fund Acquisition. Shall the Town of Pound Ridge continue to fund its capital reserve fund dedicated to acquiring ownership rights, easements or interests in open space areas, as defined in the section 247 of the General Municipal Law, and to maintaining and preserving those open space areas? Such acquisitions shall continue to be financed from the annual general tax levy for a period of ten (10) years, commencing January 1, 2011, in an amount equal to: \$.50/\$1,000 of assessed value in 2011; \$.75/\$1,000 of assessed value in 2012 and \$1.00/\$1,000 of assessed value in years 2013 through 2020.

**Eastwoods, LLC – consider Planning Board recommendation for reduction of the Performance Bond**

A recommendation has been made to the Town Board by the Planning Board on March 10, 2010 to reduce the \$700,000 bond currently held by the Town for US Summit Co./Eastwoods LLC to \$500,000, thereby releasing \$200,000. At the April 22, 2010 Planning Board meeting, a further reduction was requested by the applicant. The Planning Board recommends releasing an additional \$50,000 with the stipulation that the Golf Club provide the Town a “sign-off” from the DOT within 60 days. If the sign-off is not forthcoming, the Planning Board will require the applicant to post an additional bond to secure completion.

**RESOLUTION #: 99-10**

**Board Action:** Motion by Councilman Falco, seconded by Councilman McConville, the Board polled: Councilman Falco, aye, Councilman Lyman, abstaining, Councilman McConville, aye, Councilman Paschkes, aye and Supervisor Warshauer, aye, motion passing 4-0 on the following:

RESOLVED, that the Town Board hereby authorizes the reduction of the Performance Bond for Eastwoods LLC from \$700,000 to \$450,000 per request from the Planning Board on April 26, 2010. The Town will continue to hold the bond in the amount of \$450,000 thus releasing \$250,000 to the applicant.

**My Goodness Deli-consider request for outdoor seating**

Perry Guilianti, owner of My Goodness Deli, has submitted a Special Use Permit application to allow him to have outdoor seating April through November 2010. After some discussion whether it should be a Special Use Permit or a Special Event Permit, the Town Attorney said that the applications for outdoor seating in the Business District should be Seasonal Use Permits.

**RESOLUTION #: 100-10**

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

RESOLVED, that the Town Board hereby waives the Public Hearing requirement and approves the Seasonal Use Permit for My Goodness! Deli & Café for two outdoor tables with seating, to be located between the storefront and the sidewalk during the months of April through November 2010 between the hours of 7:00 a.m. and 7 p.m.

**Sustainability Task Force-request that the Town: Renew its membership in ICLEI, in the amount of \$600.00 for 2010; and adopt a resolution supporting the Sustainable Energy Finance Bill**

The Sustainability Task Force has requested that the Town of Pound Ridge renew its membership in ICLEI in the amount of \$600.00. John Maddocks reported that support for us to do our work under the ICLEI program will be provided by grants. Croton has received a grant for \$240,000 and Pound Ridge is one of the co-signers on this grant so we will get a portion of the grant monies.

**RESOLUTION #: 101-10**

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

RESOLVED, that the Town Board hereby authorizes the renewal of dues and continuation of the Town's membership in ICLEI-Local Governments for Sustainability in the amount of \$600.00.

John Maddocks then reviewed the Sustainable Energy Finance Bill giving a copy of the actual text of the bill to the Town Board along with memorandums from Senator Thompson summarizing the content of the bill. Basically, this resolution is asking us to support legislation that will broaden the ability of financing agency associated with home energy improvements to include revenue sources other than grant money. Legislation currently limits resources for municipal programs such as home energy improvements to grant funds only. That needs to be expanded to be able to cover more homes.

**RESOLUTION #: 102 -10**

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

RESOLVED, that the Town Board hereby support the New York State Senate Bill #S7683 and that the Town also sends a letter to our new Assemblyman encouraging that he co-sponsors a similar Bill in the Assembly to get it moved forward through both houses.

**Antiques & Tools of Business & Kitchen-request permission to add a BBQ lunch to the 2010 Farmers Markets, previously approved in September 2009**

Joan Silbersher, Antiques & Tools of Business & Kitchen is requesting permission to add a BBQ lunch to coincide with her 2<sup>nd</sup> Sunday Antiques Market which is once a month. John Ubaldo will be doing the cooking and the Town Board is asking that all the appropriate Health Department permits are received. There are certain regulations that must be followed.

**RESOLUTION #: 103-10**

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

RESOLVED, that the Town Board hereby approves the addition of the Bar-b-que lunches at the 2010 2<sup>nd</sup> Sunday Antiques Market subject to the cook getting the appropriate Health Department permits.

**Sachs Park DEC Permit-consider accepting the Professional Services Agreement for removal of invasive materials**

Allied Biological submitted a proposal to conduct an herbicide treatment to the area of Phragmites within a wetland area of the south side of the Sachs Park parking lot dated April 14, 2010. Allied Biological will submit the permit application needed to apply herbicide for a nonrefundable fee of \$150.00. The fee to conduct the Phragmites

treatment at Sachs Park is \$2,925.00 for the removal of the invasive plants pursuant to the requirements of the DEC and report that was prepared by Beth Evans, public consultant. This agreement also has a provision that would discount the invoice 24% if the application is conducted in conjunction with another project in the Pound Ridge area. Councilman Paschkes questioned the manner of using the herbicide treatment in a wetland area. This is actually mandated by DEC. Councilman Lyman explained that phragmites are impossible to kill by pulling them out or cutting them down. This is the most effective way to kill them as required by the DEC permit.

**RESOLUTION #: 104-10**

**Board Action:** Motion by Councilman McConville, seconded by Councilman Falco, the Board polled: Councilman Falco, aye, Councilman Lyman, abstaining, Councilman McConville, aye, Councilman Paschkes, aye and Supervisor Warshauer, aye, motion passing 4-0 on the following:

RESOLVED, that the Town Board hereby authorizes Supervisor Warshauer to execute the agreement with Allied Biological for \$2,925 (potentially 24% less with discount price) if it can be conducted with another project in the Pound Ridge area plus pay the \$150.00 fee for the permit application, AND, BE IT

FURTHER RESOLVED, that the \$150.00 fee be paid in advance of audit to have the application for the permit submitted.

Councilman Paschkes asked if Allied Biological guarantees their work. Supervisor Warshauer said that they guarantee what they will do but cannot guarantee eradication of the plants. Councilman Paschkes would like an amendment to the agreement assuring us that the problem will be eradicated. There was no second to the motion.

**Scotts Corners Paving Project-authorization of \$30,000 from Parking District Funds, for the re-paving of the parking areas**

The Board members adjourned the regular meeting and convened as the Parking Commission, to discuss this matter. Both parking lots in the Business District (PB-A) need repair. This would come out of the Parking District fund and can be done in the same manner as the Town Park with oil and stone. The total cost is estimated not-to-exceed \$30,000.

**RESOLUTION #: 105 -10**

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

RESOLVED, that the Town Board hereby authorizes the expenditure for the Highway Department to repair the parking lot behind DiNardo's Restaurant and across the street behind the stores with oil and stone. The approximate cost for the entire job is \$30,000. The funds will come out of the Parking District Fund and it is in the budget. All the businesses, property owners and Police will be notified prior to the commencement of this work.

**Recreation Department-requests authorization to replace the pool grates**

In 2009, the Recreation Department budgeted money for the replacement of the grates that surround the 2 pools. They were not purchased and half the money was used for the Virginia Graham Baker act where the main pool drain grates were replaced. The estimate to replace the grates on the 2 pools is \$10,822.64.

**RESOLUTION #: 106 -10**

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

RESOLVED, that the Town Board hereby authorizes David Goldberg, Recreation Supervisor, to have the pool grates replaced on the two pools estimated to cost \$10,822.64. Approximately \$6,000 will be transferred from contingency A1990.4 to A7180.201.

**Fire Department-requests permission to conduct training sessions at the Highway Department on May 17<sup>th</sup> and May 24<sup>th</sup> 2010**

The Board of Commissioners of the Pound Ridge Fire District requests permission to use the Highway Garage property for the purpose of training on May 17<sup>th</sup> and May 24<sup>th</sup>. The neighbors will be notified by the Fire Department.

**RESOLUTION #: 107 -10**

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

RESOLVED, that the Town Board hereby authorizes the Fire Department to use the Highway Garage property for their training on May 17<sup>th</sup> and May 24<sup>th</sup> with the understanding that the neighbors will be notified by the Fire Department.

**Gerald Phelps-consider accepting letter of retirement, effective July 20, 2010**

The Town Board received a letter of retirement from Highway mechanic Gerald Phelps dated April 7, 2010. His final work day will be Tuesday, July 20, 2010. The Town Board thanked him for his 18 years of service.

**RESOLUTION #: 108 -10**

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

RESOLVED, that the Town Board accepts the retirement letter from Highway mechanic Gerald Phelps effective July 20, 2010, with thanks for his 18 years of service to the Town.

**IMA Agreement with Westchester County for Mutual Aid & Rapid Response Plan-request from the Police Chief that Supervisor be authorized to sign 5 year renewal**

Chief David Ryan gave a memo dated May 5, 2010 to the Town Board attached to the Police Mutual Aid Plan between the Town of Pound Ridge and Westchester County which the Supervisor signs every 5 years. The memo requests that the Town Board authorize Supervisor Warshauer to sign the document so that Pound Ridge can continue to be part of the plan in Westchester County.

**RESOLUTION #: 109 -10**

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

RESOLVED, that the Town Board hereby authorizes Supervisor Warshauer to sign the Mutual Aid & Rapid Response Inter-municipal Agreement (IMA) between the Town of Pound Ridge and Westchester County which will be the renewal for five (5) years.

**FINANCIAL MATTERS:**

**Celebrations – Advance of Audit payment for Memorial Day Bands**

**RESOLUTION #: 110-10**

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

RESOLVED, that the Town Board hereby authorizes the payment in advance of audit for the Memorial Day bands, And, Be It

FURTHER RESOLVED, that the Town Board hereby authorizes the payment in advance of audit for the Mt. Kisco Scottish Pipes and Drums (\$1,000.00) for the Memorial Day Celebration and payment in advance of audit for the Bearcats Entertainment (\$1,000.00) for performing in the Memorial Day Parade and Ceremony on Monday, May 31, 2010.

**ADJOURNMENT:** There being no further business to come before the Board, Supervisor Warshauer adjourned the regular meeting at 10:00 p.m.

Joanne Pace  
Dated at Pound Ridge, New York  
May 10, 2010