

December 1, 2008

The regular meeting of the Town Board of the Town of Clifton Park was held in the Town Office Building at 7:00 p.m., Supervisor Barrett presiding.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

Present: Councilman Paolucci  
Councilman Hughes  
Councilman Roth  
Councilwoman Walowit  
Supervisor Barrett  
Town Clerk O'Donnell

Also Present: Town Attorney McCarthy  
Michael Shahan, Town Administrator  
Mark Heggen, Comptroller  
John Scavo, Director of Planning

MOTION BY Councilman Roth, seconded by Councilwoman Walowit, to approve the minutes of the November 10 and 17, 2008 meetings as presented.

**ROLL CALL VOTE**

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

**MOTION CARRIED**

**ANNOUNCEMENTS AND COMMUNICATIONS**

Councilman Roth said the November 18<sup>th</sup> Compost Facility report from Jeff Trzeciak, McDonald Engineering, will be the last one, however, there are still issues regarding unprocessed windrows and the moisture readings for October have not been submitted. He said at this time there is no apparent odor. Councilman Roth said there has been no response from DEC regarding the plan of proposed modifications to the existing permit and asked Mr. Trzeciak to stay on top of this.

Councilman Roth reported he has researched the town giving money to Section 8 to shorten the waiting list for Clifton Park residents but was told there is no guarantee that monies would benefit town residents. Town Comptroller Heggen explained since this is a federal program approval would be needed from the federal government. He further explained once an individual is in the program he/she can go anywhere in the country.

Councilman Paolucci referred to a letter dated November 26<sup>th</sup> from Robert J. Chauvin, member of 1743 Route 9 LLC, asking that 123 acres on Waite Road be approved as an outside district user in the Corporate Commerce Sewer District. The Councilman would like a more detailed map of the entire area. Director of Planning Scavo explained a low pressure system will be used, not grinder pumps. Councilman Roth reported originally the developer was planning on septic systems but is willing to bring sewers to the project due to town's environmental concerns.

**PUBLIC PRIVILEGE ON RESOLUTIONS**

Comment from the floor questioning the need to adopt a "conditional negative declaration" for Windhover Farms.

Question from the floor regarding the Ethics Law being presented this evening and any amendment made since the public hearing. Town Attorney McCarthy explained the only change was discussed at the public hearing, specifically former Town Board members volunteering time

and expertise to the town; the nepotism clause clarifying immediate family members by adding spouses in the definition; pluralizing “deputy” to include all town attorneys and clerks; prohibiting town employees from bidding on town surplus equipment. Comment from the floor that this is a significant change and takes a right away from an employee and should require another public hearing. Mr. McCarthy responded whether or not a change is significant enough to require another public hearing is at the discretion of the Town Board. From the floor, all town employees should take the ethics training.

Comment from the floor requesting the proposed Ethics legislation be tabled until a further date since this is a piece meal approach. He expressed concern that the legislation was not available on the website. The speaker said the nepotism change doesn’t go far enough and should include significant other, boyfriend, and girlfriend. He referred to Section 17-4(6) “soliciting town employees” and recommended adding the word “receiving”.

Comment from the floor requested the proposed legislation be tabled. He stated names of individuals lobbying or discussing issues with the Town Board should be on the town website. The speaker further suggested individuals appointed to various boards should have some kind of residency time requirement.

Member of the audience asked if the Girvin & Ferlazzo Law firm was actively involved in the Windhover SEQRA determination. Supervisor Barrett responded yes. The speaker asked if there could be a conflict of interest. Town Attorney McCarthy stated no and reviewed credentials of Chris Langlois, attorney with the law firm, noting he is one of the two foremost SEQRA experts in the Capital District and is not in partnership with anyone associated with this project, nor is the law firm.

Resolution No. 319 of 2008, a resolution issuing a Conditioned Negative Declaration for Windhover Farms Incentive Zoning Proposal, pursuant to the State Environmental Quality Review Act.

Introduced by Councilman Roth, who moved its adoption, seconded by Councilwoman Walowit.

WHEREAS, application on behalf of BAC Infrastructure Management and Development for an twenty (20) lot increase in permitted single-family dwelling unit density pursuant to Town Code Article VB (Open Space Incentive Zoning) in connection with the proposed development of 131.12 acres of land, located on the north side of Grooms Road approximately one-half mile west of Grooms Corners, into a forty-five (45) single family detached home building lots and a horse farm, together with related improvements (“the Project”), and

WHEREAS, the State Environmental Quality Review Act (“SEQRA”) and the regulations thereunder require the Town Board to undertake a review of the potential environmental impacts, if any, associated with the project before approving same, and

WHEREAS, this project is an Unlisted Action within the meaning of SEQRA and the regulations thereunder, and

WHEREAS, Part 1 of the Full Environmental Assessment Form was transmitted to all involved agencies together with notification of the Town Board’s desire to act as lead agency with respect to the environmental review of the proposed Project, and

WHEREAS, thirty (30) days have elapsed without any objection to the designation of the Town Board as lead agency with respect to the environmental review of the proposed Project, and

WHEREAS, 6 NYCRR Section 617.7 requires a lead agency to issue a written determination of significance with respect to any proposed Unlisted Action, and

WHEREAS, the Town Board has carefully considered the nature and scope of the proposed Project, as set forth in the Full Environmental Assessment Form prepared with respect

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to such action, together with all supporting project documentation and public comment received; now, therefore, be it

RESOLVED, that the Town Board finds and concludes that the proposed action is an Unlisted Action, and be it further

RESOLVED that the Town Board hereby declares itself lead agency with respect to the environmental review of the proposed project; and be it further

RESOLVED, that upon consideration of the foregoing, the Town Board hereby issues a Conditioned Negative Declaration, as set forth in Notice of Determination of Non-Significance prepared with respect to the proposed action.

Director of Planning Scavo stated this resolution is only for consideration of a conditioned negative declaration. He explained that upon adoption this would be published in the Environmental Notice bulletin published by NYSDEC and would allow a 30 comment period before the Town Board takes any action, pro or con, regarding the incentive zoning. Mr. Scavo reviewed the three areas that will need additional follow up. The Conditioned Negative Declaration is attached to these minutes.

Councilman Paolucci referred to a letter from the applicant's representative, Kevin Dailey, changing the project from 45 to 46 building lots. He questioned if the project conforms to CR zoning.

Mr. Dailey, appearing on behalf of the applicant, explained the original application for subdivision called for 45 lots. He explained the 46th lot, which is a separate lot off of Miller Road, does not require a subdivision because it is an 8 acre lot in the same ownership, however, for calculations purposes of the total number of wetland acres and SEQRA purposes is included in the total. Mr. Dailey reported sketch plans submitted have been changed as input and advice is received. He explained people did not like the hamlet approach due to small lots so lot sizes have been increased.

Mr. Scavo said this evening's resolution only looks at potential environmental impacts. He reported the wetland delineation and the adequacy doesn't meet the intent of CR zoning but this will not be decided until after the SEQRA public comment period has expired.

Mr. Dailey said the Town Board has been asked to look at the Springel property as area to be set aside as a permanent conservation easement. He said it is his understanding the Town Board is looking at preserving a parcel on Hubbs Road. He continued at this time the developer is offering to furnish funds for the preservation of the Hubbs Road property, thereby permanently preserving two properties.

Mr. Scavo said he doesn't see anything that would preclude the Board from acting on this resolution this evening.

Councilman Paolucci reviewed CR zoning and the transfer of development rights. He explained originally 45 lots were planned with 20 lots part of the transfer of development rights which was based upon 60 acres of upland area on the Springel property. It has since been determined the wetlands delineation is closer to 45 upland acres. Councilman Paolucci asked Mr. Scavo why the Planning Board gave a positive recommendation if the land couldn't be developed. Mr. Scavo explained when the Planning Board looked at the language in the CR code in the area of unconstrained lands. The code doesn't define unconstrained lands as those lands surrounded by wetlands that are difficult to develop but they're basically areas that aren't part of a wetland. Looking at that information, the Planning Board did feel that it is not under development pressures right now but will be at some point in the future and development rights should be secured now. Mr. McCarthy asked Mr. Scavo if this course of action will provide the Town Board with the maximum amount of flexibility from a SEQRA standpoint to vote either for or against the project. Mr. Scavo responded yes.

Councilman Roth stated this resolution is only allowing the project to move to another stage and is not even close to saying yes or no to the project. He said he has reservations about the value of

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what the town is getting in exchange for what the town is giving, as well as the cost of the additional lots and has a large concern about the density of the project and what the conditions are that the town needs to bring forward to people that would move into the project. If this project goes forward, he said the residents need to have an ownership, e.g. agreeing that the resident would have a horse and take ownership in what the project is all about.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 320 of 2008, a resolution authorizing the Town Supervisor to sign a written Notice of Termination providing notice to the Town of Glenville pursuant to an Agreement to Purchase and Sell Water dated June 13, 2000.

Introduced by Councilman Roth, who moved its adoption, seconded by Councilwoman Walowit.

WHEREAS, Resolution No. 59 of 2000 authorized the Supervisor to enter into an agreement for the purchase or sale of water between the Town of Glenville and the Rexford Water District No. 2, and

WHEREAS, the Board of Directors of the Clifton Park Water Authority requests that the Town Board of the Town of Clifton Park, as Commissioners of the Rexford Water District No. 2, send written Notice of Termination to the Town of Glenville, acting as Commissioners of Water District No. 11, pursuant to paragraph seven (7) of the June 13, 2000 "Agreement for the Purchase and Sale of Water", and

WHEREAS, the existing Agreement is set to expire on December 31, 2009 and accordingly the written Notice of Termination must be submitted twelve (12) months before the existing Agreement is to expire; now, therefore, be it

RESOLVED, that the Town Board of the Town of Clifton Park, as Commissioners of the Rexford Water District No. 2, hereby authorizes the Town Supervisor to sign on its behalf a written Notice of Termination providing notice to the Town of Glenville pursuant to an Agreement to Purchase and Sell Water, dated June 13, 2000.

Supervisor Barrett explained if the Notice of Termination is not received by the Town of Glenville by the December 31, 2008, the agreement automatically renews for five years. Councilman Roth reported the Clifton Park Water Authority has made every effort to come up with a better agreement with the Town of Glenville but Glenville has not responded. He further said there could be a savings in the neighborhood of \$100,000 by going with the County water system versus the Town of Glenville. Supervisor Barrett noted water will still be purchased from the Town of Glenville through 2009.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

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Resolution No. 321 of 2008, a resolution to submit a State Recreation Trail Grant for Kinns Road Trail Extension.

Introduced by Councilman Hughes, who moved its adoption, seconded by Councilman Paolucci.

WHEREAS, the NYS Office of Parks, Recreation and Historic Preservation has announced a new “Recreational Trails Program” funded by SAFETEALU (Safe, Accountable, Efficient, Transportation Equity Act: A Legacy for Users) Surface Transportation Federal Funding to be administered by the State, and

WHEREAS; the maximum grant award has been set at \$200,000, and

WHEREAS; the Town wishes to provide community-wide connectivity to its many recreational facilities as recommended by the Town Trails Master Plan and the Town Comprehensive Plan, and

WHEREAS, the Town has undertaken to design a use and management plan for the Dwaas Kill Nature Preserve adjacent to Kinns Road, and

WHEREAS; the Town constructed a Kinns Road trail segment in 2007 as part of a plan to connect the Sherwood Forest neighborhood to both the Kinns Road Park and the Vischer Ferry Road Multi-Use Path leading to Clifton Common and several additional neighborhoods, including Country Knolls West to the north and Knoll Top to the east, in the near future, and

WHEREAS, the Town wishes to provide a safe user access to the Dwaas Kill Nature Preserve from the vicinity of the Kinns Road Park and the Kinns Road Trail by extending the Kinns Road Trail from Carlton Road east to Castle Pines Drive and to create an access point and small refuge area on public lands adjacent to the trail; now, therefore, be it

RESOLVED, that the Clifton Park Town Board hereby authorizes the Town Supervisor and directs the town staff to file an application for funds from the New York State Office of Parks, Recreation and Historic Preservation in accordance with the provisions of the Recreational Trails Program, in an amount not to exceed \$200,000, and requires a minimum 20% cash match, and be it further

RESOLVED, that the Town recognizes that this is a reimbursement program and the Town will be prepared to fund the project; and be it further

RESOLVED, that upon receipt of the grant award, the Town will enter into and execute a project agreement with the State for such financial assistance to the Town of Clifton Park for the Kinns Road Trail Extension and Dwaas Kill Nature Preserve Access.

Councilman Paolucci questioned the necessity of the parking area and asked if it gives a stronger grant application. He expressed concern for nearby neighbors and doesn't want to be obligated due to language in the resolution. Councilman Hughes said this has been discussed with the Dwaaskill Committee. Councilwoman Walowit said there are very few places that are safe for off street parking in order to access the Dwaaskill Nature Preserve. Mr. Scavo recommended amending the resolution by removing “a small parking area” and adding an access point and small refuge area.

MOTION BY Councilman Paolucci, seconded by Councilwoman Walowit to amend the resolution by removing “a small parking area” and adding an access point and small refuge area.

ROLL CALL VOTE ON MOTION

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None  
MOTION CARRIED

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ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 322 of 2008, a resolution appointing Michael Hale to the Planning Board.

Introduced by Councilman Roth, who moved its adoption, seconded by Councilman Hughes.

WHEREAS, due to the resignation of Jennifer Thorne, an opening exists on the Planning Board, and

WHEREAS, Michael Hale, 1057 Ballston Lake Road, Ballston Lake, has been recommended to fill the position; now, therefore, be it

RESOLVED, that Michael Hale, 1057 Ballston Lake Road, Ballston Lake, is hereby appointed to the Planning Board to fill the unexpired term of Jennifer Thorne, term to expire December 31, 2014.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 323 of 2008, a resolution authorizing a budget transfer for the Longkill I Park District.

Introduced by Councilman Paolucci, who moved its adoption, seconded by Councilman Roth.

WHEREAS, Michael Handerhan, Supervisor of Buildings and Grounds, has recommended that a budget transfer be made in the Longkill I Park District for miscellaneous expenditures within the Park District; now, therefore, be it

RESOLVED, that the Comptroller is hereby authorized to transfer \$1,589 from SP57123-200 (Longkill Park District No. I -Equipment) to SP5123-24 (Longkill Park District No. I- General Maintenance).

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

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Resolution No. 324 of 2008, a resolution adopting Local Law No. 8 of 2008, a local law amending Chapter 125 of the Town Code, Conservation Easements, as amended.

Introduced by Councilman Roth, who moved its adoption, seconded by Councilwoman Walowit.

WHEREAS, the Town Board has received input supportive of amending Chapter 125 of the Town Code, and

WHEREAS, on November 3, 2008 at 7:10 P.M., a public hearing was conducted to consider the proposed changes to the local law, and

WHEREAS, the public was given the opportunity to speak in favor of or against the proposed local law; now, therefore, be it

RESOLVED, that Local Law No. 8 of 2008, a local law amending Chapter 125 Conservation Easements, as amended, is hereby adopted; and be it further

RESOLVED, that the Town Clerk file said notice with the New York State Department of State as required by law.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 325 of 2008, a resolution transferring funds to the Open Space Capital Reserve Fund.

Introduced by Councilman Hughes, who moved its adoption, seconded by Councilman Roth.

WHEREAS, by Resolution No. 329 of 2008, the Town Board adopted Local Law No. 8 of 2008, amending Chapter 125 of the Town Code, Conservation Easements, and

WHEREAS, Section 125 (8) (E) of the Local Law, as amended, now requires that penalties collected as a result of cancellation of Term Easements or Non-compliance with the Terms shall be deposited into the Town's Open Space Capital Reserve Fund, and

WHEREAS, Comptroller Mark Heggen reports that the balance in an account that has been collected as of November 28, 2008, as a result of cancelled Term Conservation Easements and interest is \$44,725.60, and

WHEREAS, the Town Board wishes to give immediate effect to the concept of using funds generated as a result of a Conservation Program be utilized to support the Town's initiatives reflecting another Conservation program, and specifically the Open Space Implementation Plan; now, therefore, be it

RESOLVED, that the Comptroller is directed to close out an account titled "Town of Clifton Park Conservation Easement Refund" and transfer the balance collected as a result of cancellations and/or defaults to the Open Space Capital Reserve Fund.

Councilman Hughes reported this will bring the Open Space Capital Reserve Fund to approximately \$510,000.

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ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 326 of 2008, a resolution adopting Local Law No. 9 of 2008, a local law amending Section 208-78 of the Town Code, Historic Preservation, as amended.

Introduced by Councilwoman Walowit, who moved its adoption, seconded by Councilman Roth.

WHEREAS, the Town Board has received input supportive of amending Section 208-78 of the Town Code, Historic Preservation, and

WHEREAS, on November 3, 2008 at 7:20 P.M., a public hearing was conducted to consider the proposed changes to the local law, and

WHEREAS, the public was given the opportunity to speak in favor of or against the proposed local law; now, therefore, be it

RESOLVED, that Local Law No. 9 of 2008, a local law amending Section 208-78 of the Town Code, Historic Preservation, as amended, is hereby adopted; and be it further

RESOLVED, that the Town Clerk file said notice with the New York State Department of State as required by law.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 327 of 2008, a resolution adopting Local Law No. 10 of 2008, a local law amending Chapter 17 of the Town Code, Ethics, as amended.

Introduced by Councilman Hughes, who moved its adoption, seconded by Councilwoman Walowit.

WHEREAS, the Town Board has received input supportive of amending Chapter 17 of the Town Code, Ethics, and

WHEREAS, on November 17, 2008, at 7:10 P.M., a public hearing was conducted to consider the proposed changes to the local law, and

WHEREAS, the public was given the opportunity to speak in favor of or against the proposed local law; now, therefore, be it

RESOLVED, that Local Law No. 10 of 2008, a local law amending Chapter 17 of the Town Code, Ethics, as amended, is hereby adopted; and be it further

RESOLVED, that copies of Chapter 17 as amended, the Town's Procurement Policy and Procedures, as well as the New York State's conflicts of interest language as contained in Article 18 of the New York State General Municipal Law shall be distributed to all Employees of the Town; and be it further

RESOLVED, that the Town Clerk file said notice with the New York State Department of State as required by law.

Councilman Hughes reviewed highlights of the legislation, including prohibiting town employees from bidding on surplus property put up for bid by the town. He asked Mark Davies, Executive Director of the NYS Conflict of Interest Board, to review this legislation and Mr. Davies responded this is one of the best local Ethics Law he has seen and is posting it on his board website as well as the NYS Bar Association municipal law section website. Councilman Hughes expressed appreciation to Messrs. McCarthy and Peller, William Pomeroy, Ethics Board Chair, Town Board, NYS Bar Association, and NYS Association of Towns. With regard to the nepotism question, e.g. boyfriend/girlfriend, Supervisor Barrett said there needs to be some discretion and it is not something that can be easily quantified but would hope that that would be identified as an immediate member of the family. Councilman Roth recommended that this legislation be passed this evening. Town Board members expressed appreciation to Councilman Hughes for his efforts.

ROLL CALL VOTE

Ayes: Councilman Paolucci, Councilman Hughes, Councilman Roth,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

PUBLIC PRIVILEGE

Norman Goldman, London Square, thanked Councilman Roth for looking into the Section 8 suggestion; however, he said he did not suggest the town become part of the federal program but that the town establish a parallel program. Mr. Goldman questioned the Windhover Farms conditional negative declaration. He recommended all employees take part in the ethics training so as to know what is expected of them. Mr. Goldman again reiterated his view that the 2001 Adult Use Business legislation was not properly done.

Youseff Ballout, Torrero Drive, agreed the Ethics Code needed to be updated but can still be improved upon. He stated anyone talking to town officials, as well as points of the discussion, should be noted on the website. Mr. Ballout recommended a length of residency be established as a requirement before board appointments. He further recommended adding to the Town Code that Town Board members recuse themselves from any discussion/decisions concerning anyone who has contributed money to their campaigns.

Supervisor Barrett clarified the Windhover project has not been approved conditionally, just the environmental review.

MOTION by Councilman Paolucci, seconded by Councilwoman Walowit, to adjourn the meeting to the next regular meeting or any other meeting necessary for the conduct of Town business.

Motion carried at 8:55 p.m.

Patricia O'Donnell  
Town Clerk