

MINUTES OF THE REGULAR MEETING OF THE FORT ANN TOWN BOARD HELD APRIL 14, 2014

PRESENT: Supervisor Darlene Dumas
Councilwoman Gretchen Stark
Councilman Howard Denison
Councilman Floyd Varney
Councilwoman Deborah Witherell

OTHERS PRESENT: Jeff Meyer, Town Attorney, Helen Denno, Confidential Secretary to the Supervisor, Barbara Winchell, Town Clerk, Paul Winchell, Highway Superintendent, MaryEllen Pierce, Assessor, Don Ballard, Mark Miller, Enforcement Officer, Bill Toscano, The Post Star, Gene Connell, Richard Moore, Kim Bender, Gene Ouderkirk, Arlene Green, Joan Degener, Members of the Raymond W. Harvey Post 703, Christine Milligan, David Sherwood, George Sherwood.

Supervisor Dumas called the meeting to order at 7:01 p.m. with the pledge of allegiance and a moment of silence was held for Fort Ann deceased residents.

Motion was introduced by Councilwoman Witherell, seconded by Councilwoman Stark, to accept the Special Meeting Minutes of March 10, 2014.

Motion was introduced by Councilwoman Witherell, seconded by Council man Varney , to accept the Town Board Minutes of March 10, 2014.

Motion was introduced by Councilwoman Stark, seconded by Councilwoman Witherell , to pay the bills as warranted and audited.

Supervisor's Report: The monthly statement to supervisor is available on the Town's website, fortannfornow.com. A paper copy is available upon request. Supervisor Dumas stated she had approximately 50 phone calls for the month of March. Supervisor Dumas reminded those in attendance of the second page of the agenda which addresses the privilege of the floor parameters. She wants people to come to the meetings and speak but doesn't see the need to have the same conversations over and over or for people to be rude. She will impose time limits when necessary. Supervisor Dumas has a meeting scheduled with Dick Look of Northern Insuring Agency on April 22, 2014. She'll also be meeting with the Town of Lake George Supervisor Dennis Dickinson regarding septic issues in the near future.

Supervisor Dumas prepared and read the following statement addressing Mr. Moore's outstanding seven (7) questions:

- 1. Is the dam properly insured? Specifically, if the dam were to breach again, would it be insured for 100% of any loss minus any deductible?**

At the March 10th Town Board meeting, the Town's insurance agent verified that the dam has been fully and properly insured since Supervisor Dumas became supervisor 1/1/12. Each year she asks the Engineer for the company that inspects the dam for his professional opinion regarding the amount of coverage required for the dam. She then works with the town's insurance agent to obtain that coverage in the most cost-effective manner. Last year, the dam was insured for more than \$4 million. This year,

coverage was increased to \$5 million. These amounts are not pulled out of thin air but are instead based upon professional advice.

- 2. The deductibles on the dam. Darlene said she was going to contact the insurance broker to review the deductibles, but never did. Mr. Moore sent her all of the info she needed to have regarding this matter.**

As noted above, Supervisor Dumas confers with both the Engineer who does the inspection of the dam for the Town and the Town's insurance agent each year regarding the insurance for the dam. The statement that the Fort Ann Town Board had not reviewed the deductibles is simply incorrect. Furthermore, at the March 10th Town Board meeting, the Town's insurance agent addressed the issue of raising the deductible on the dam. At the current time, the deductible on the dam is \$25,000.00. Raising the deductible to \$100,000.00 would save the Town a small amount of money per year (approximately \$3,000.00) while significantly increasing the Town's exposure in case of a problem at the dam. In our agent's professional judgment, the Town has made the correct choices in terms of insuring the dam and Supervisor Dumas agrees.

- 3. Questions about Hadlock financials. Helen Denno offered to meet with Supervisor Dumas and Richard Moore to discuss his concerns. Mr. Moore accepted Helen's offer, but Supervisor Dumas never would set up the meeting.**

If Mr. Moore would like to submit to Supervisor Dumas a short list of reasonable questions, Supervisor Dumas will ask Mrs. Denno to produce a report that contains the answers to any questions that she is able to answer within two weeks of receipt of the questions. The report will be posted on the website for all to see.

- 4. Questions for OSC resulting from the meeting between Supervisor Dumas and Mr. Moore at the Log Jam Restaurant April 2013.**

Supervisor Dumas contacted the Comptroller's Office and she was told to contact the Town Attorney and that is what she had been doing since becoming the Fort Ann Supervisor.

- 5. Mishandling of Checks by Aspland. Why wasn't Aspland held accountable to pay the Lake Hadlock Park District residents back the lost interest?**

Supervisor Dumas cannot and will not try to guess the motivation behind the actions of a former Supervisor and a former Town Board. Supervisor Dumas can only trust that they asked Mr. Aspland to hold the checks for reasons they felt were proper.

The interest paid on savings accounts by Glens Falls National at the time in question was approximately 0.1%. The total amount in question was \$420,000.00. The time period during which the checks were held by Mr. Aspland's firm was approximately two months. As a point of information, Glens Falls National Bank was asked how much interest would have accrued if the checks had been deposited in the Town's account promptly after receipt by the prior supervisor. The bank indicated that the total amount of interest that would have been earned for that period would have been \$49.90. Mr. Aspland's firm did not charge the Town for holding the checks and, frankly, neither Supervisor Dumas nor the Town Board even considered asking Mr. Aspland for the \$49.90 of interest that would have accrued during the prior Supervisor's term.

After Supervisor Dumas was elected she obtained the checks and deposited them into the Town of Fort Ann bank account.

6. Why did the Lake Hadlock Park District residents have to pay approximately \$48,000.00 in additional interest on the last 3 BANs due to an error made by the Town's law firm, ambiguity in when the BAN could be paid in full, in drafting the documents? Why wasn't Aspland's firm made to pay for its errors?

First, the basic premise behind this question is incorrect: no one paid any "additional interest" on those BANs.

Second, the events in question happened before Supervisor Dumas being elected. Supervisor Dumas cannot try to guess why the prior Town Board and prior Supervisor made the decisions they made.

Third, the official Confirmation Sheets for the renewal of the three BANs clearly state that none of the associated three notes were subject to redemption prior to maturity, reflecting the policies of the financial institutions that issued the notes. There is no ambiguity in the documents nor were there any errors in drafting them. The interest paid was the interest due and it could not have been reduced through prepayment.

Fourth, the entire question is moot, since the Town would never have prepaid the money since it didn't have the funds to do so.

7. Why isn't Supervisor Dumas willing to tell us what New York state law & a whole bunch of other laws caused her to give 100% of the Town's liability for the Dam, which the Town owns, to the Lake Hadlock Park residents?

You already know the answer to this question. It was discussed fully during the August 13, 2012 Town Board meeting – a meeting that Mr. Moore attended. The minutes of that meeting (available online) contain the paragraph copied below. Mr. Moore also knows, that from all of the information that Supervisor Dumas has received from him, she was sympathetic to the District's plight and thought that it would be fair to have the entire Town share the debt but our attorneys were clear: any attempt to do that by the Town would have been illegal and would have incurred additional legal liability for the Town:

Supervisor Dumas spoke on the Bond issue, i.e. Bond Anticipation Note ("BAN") for payment of Hadlock Pond Dam breach in 2005. The current BAN expires August, 2012. Ms. Dumas suggested taking out a long-term bond instead of a year-to-year BAN, which has been done. An information sheet was distributed to Ms. Denno, Town Attorney and Supervisor Dumas. Moody's Investors Service has rated/considered the Town an A1 with a 3% interest rate. This would be a bond at 3% for 23 years. The price for the district was paying for the loan was \$235,000.00 a year but now the amount will be \$110,000.00 a year. If the loan was paid off earlier, the Town would be penalized. After 7 years, it could be paid off without penalty. The Town is liable for 23% of claims against the Town. If settlement is made, not by a trial, the Town is responsible for 23%. Legally, the Town cannot pay and is not going to pay the 23% of the \$1,690,000.00. A question to the Supervisor was if the Town could gift the money and pay the loan. The answer was the Town cannot do this. In 2006, 2 resolutions stated the District is obligated to pay the debt. Morally, the Supervisor believes the Town should be paying, not the Hadlock District.

Supervisor has asked if the Town pays the 23%, the Town would have to create a new BAN resolution and the Town would have to go through the BAN process again. Richard Moore, Summer Way, Fort Ann, NY spoke on the BAN. Supervisor stated the Town should contribute but cannot, according to the NYS Law.

The Town's requirement to assign the 23% to the District, based on the resolutions passed by prior Town Boards, was clear. Furthermore, even without those resolutions, NY Town Law prevents the Town from paying for improvements or replacements to damaged facilities within a park district with monies taken from the Town's general fund. The NYS Office of the Comptroller has released official opinions that are directly to this point. The following quotations are taken from a 2008 Office of the Comptroller opinion:

"The costs of construction of additional facilities or reconstruction or replacement of obsolete, inadequate, damaged, destroyed or worn out facilities, undertaken in an existing town park district pursuant to the authority in Town Law S 202-b, are charged against the properties within the park district on an ad valorem basis, and are not general town expenses payable out of the town's general fund."

"Town Law S 202 relates to the manner in which expenses for town special district improvements are raised. Town Law S 202 (3) provides that the expenses of establishing and providing the improvements for a park district "shall be assessed, levied and collected from the several lots and parcels within the district" in the same manner and at the same time as other town charges (i.e. on and ad valorem basis)(11 Ops St Comp No. 7841, at 744). 2 Further, Town Law S 202-b (1) provides that costs or expenses incurred pursuant to that section "shall be a charge against the district and assessed, levied and collected in the same manner as other charges against that particular district." (see also Town Law S202 [4], 202-a). Thus, the costs of the initial improvements for a newly-created park district, as well as the costs of construction of additional facilities or reconstruction or replacement of obsolete, inadequate, damaged, destroyed or worn out facilities, undertaken in an existing park district pursuant to the authority in Town Law S 202-b, are charged against the properties within the park district on an ad valorem basis."

*"Moreover, a town may not, by the adoption of a local law, provide for the use of general fund money for this purpose. Articles 12 and 12-A of the Town Law establish a comprehensive legislative scheme evincing an intent to pre-empt local laws relating to the establishment, financing and operation of town improvement districts (see *Coconato v Town of Esopus*, 115 AD2d 39, 547 NYS 2d 953, lv denied 76 NY2d 701, 558 NYS2d 891; 2001 Ops St Comp No. 2001-7, at 11; 2000 Ops St Comp No 200-17, at 44; 1992 Ops St Comp No. 92-33, at 84). In addition, although the Municipal Home Rule Law authorizes a town to adopt local laws that supersede, in certain respects, provisions of the Town Law in its application to the town (Municipal Home Rule Law S 10 [1] [ii] [[d] [3]), there is an express restriction on this home rule authority with respect to provisions relating to a "special or improvement district" (Municipal Home Rule Law S 10[1] [ii] [d] [3] [3] [3]). Therefore, a town may not, by local law, provide for the transfer of general fund monies to finance park district improvements."*

The Attorney for the Town and the attorney for the Town's insurance agency both made it clear that had the Board assigned the 23% to the entire Town the action would have been an illegal act contrary to Town Law. Further, any citizen of the Town outside of the District could have sued the Town – and won.

Thus we were constrained by both the prior resolutions and by NY Town Law. Our hands were tied and the actions that the Board took in this regard were the proper ones.

Because Supervisor Dumas was and is sympathetic to the people in the District, she tried to find a way to have the entire town share the debt but there were no options to be found that wouldn't immediately lead to new lawsuits.

Mr. Moore, you have asked this question repeatedly and continue to push for a different result but the actions the Town Board took were proper, legal and required by law.

Town Clerk's Report: Was given for the month of March 2014.

Public Comment was opened at 7:24 p.m. and closed at 7:25 p.m. with no comments being made.

Highway Superintendent's Report: The Highway Superintendent reported that his crew started sweeping roads last week in West Fort Ann and they are almost done but had to stop due to pending weather forecast of snow/rain. There have been a lot of issues with pot holes. Mr. Winchell will make arrangements to discontinue town use and maintenance of part of T. Owens Road on the Walker Farm to allow engineers to design ways to reduce runoff from a facility there. Mr. Winchell reported that approximately 1610'-1640' of T. Owens Road would be maintained by the Town of Fort Ann Highway Department and he will complete the necessary paperwork according to S171 of Highway Law the Town of Fort Ann has a right of way.

The Town Board also agreed with Mr. Winchell's request to declare some pieces of equipment as surplus, including a 1989 John Deere tractor; 1996 stainless steel sander and a 1999 stainless steel sander. Mr. Winchell stated that out of his \$45,000.00 equipment budget there is approximately \$18,000.00 left and he would like to purchase a used backhoe.

Councilwoman Stark stated the Recreation Committee met and decided to disburse the \$1,000.00 from the ice fishing derby to the following: \$400.00 to Big Brother/Big Sister; \$400.00 to Youth League; \$100.00 Fort Ann Library and \$100.00 to Make-A-Wish.

Councilwoman Stark discussed and presented the following two resolutions:

Resolution 41-14

RECOGNIZING LAKES TO LOCKS PASSAGE, INC.

On motion of Councilwoman Stark, seconded by Councilman Varney, the following resolution was ADOPTED -VOTE -

Ayes 5 Stark, Varney, Dumas, Denison, Witherell

Nays 0

IT IS RESOLVED, to recognize Lakes to Locks Passage, Inc.

Resolution 42-14

APPLY FOR GREENWAY GRANT

On motion of Councilwoman Witherell, seconded by Councilman Denison, the following resolution was ADOPTED -VOTE -

Ayes 5 Witherell, Denison, Dumas, Stark, Varney

Nays 0

IT IS RESOLVED, that the governing board of the Town of Fort Ann hereby does approve and endorse the application for a grant under the 2014 Geenway Conservancy Small Grant Program, for a project known as Fort Ann Old Champlain Canal Trail Development- Phase 2 and located within this community.

Councilman Denison stated that he is of the opinion that not all of the Hadlock questions have been addressed.

Councilman Denison reported on additional research he has done on removing lights on Goodman Road, which cost the town about \$2,000.00 a year in electricity. It would cost approximately \$13,000.00 to remove the lights. The board will continue its discussion on the topic at future meetings.

Supervisor Dumas introduced Mark Miller, Enforcement Officer. Mr. Miller stated since he started April 1st he has been spending time getting acquainted with town ordinances and has been traveling around the Town of Fort Ann looking at potential violations. He will be touring the town with Councilman Varney on April 17th.

Supervisor Dumas announced that Fort Ann resident Mrs. Sally Walker was chosen to represent Washington County during the New York State Senior Citizens' Day in Albany on May 6, 2014. Supervisor Dumas also announced that Ann Corcoran was selected as Senior of the Year for Queen Anne Senior Citizens. A different Senior is chosen each year. This year the Senior of the Year day celebration honoring Ann Corcoran will be May 2, 2014.

Resolution 43-14

INTRODUCING LOCAL LAW 1 OF 2014, A LOCAL LAW REINSTATING THE PARKLAND REQUIREMENT FOUND IN THE SUBDIVISION REGULATIONS

On motion of Councilwoman Witherell, seconded by Councilman Varney, the following resolution was ADOPTED – VOTE –

Ayes 5 Witherell, Varney, Dumas, Denison, Stark

Nays 0

IT IS RESOLVED, that the proposed Local Law is hereby accepted for introduction to the Town Board. A public hearing shall be scheduled for this consideration on May 12, 2014 at 7:00 p.m. and copies of the Local Law shall be available at the Town Clerk's office for review.

Resolution 44-14

APPOINTING BARBARA J. WINCHELL, TOWN CLERK, AS RECORDS ACCESS OFFICER FOR THE REMAINDER OF 2014

On motion of Councilman Varney, seconded by Councilwoman Witherell, the following resolution was ADOPTED – VOTE –

Ayes 5 Varney, Witherell, Dumas, Denison, Stark

Nays 0

IT IS RESOLVED, that the Fort Ann Town Board hereby appoints Barbara J. Winchell to serve as Records Access Officer for the remainder of 2014 and she shall receive a stipend of \$1,000.00 for this additional position.

Resolution 45-14

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 8899 AND SENATE BILL 6649

On motion of Councilwoman Witherell, seconded by Councilman Denison, the following resolution was ADOPTED – VOTE –

Ayes 5 Witherell, Denison, Dumas, Varney, Stark
Nays 0

IT IS RESOLVED, that the Town Board hereby affirms its desire to remove the five (5) parcels described in resolutions 40 of 2013 and 27 of 2014 from the Lake Hadlock Park District in the Town of Fort Ann, County of Washington and that the Town Board passes this resolution in support of Assembly Bill 8899 and Senate Bill 6649 providing the necessary authorization to the Town Board to diminish the area of the Lake Hadlock Park District.

Resolution 46-14

RESOLUTION SETTING STANDARD WORKDAY

On motion of Councilwoman Stark, seconded by Councilman Varney, the following resolution was ADOPTED – VOTE –

Ayes 5 Stark, Varney, Dumas, Denison, Witherell
Nays 0

IT IS RESOLVED, that the Town of Fort Ann hereby establishes the following as standard work days for elected and appointed officials and will report the following days worked to the New York State and Local Employees' Retirement System based on the record of activities maintained and submitted by these officials to the Clerk of this body.

Public Discussion was opened at 8:58 p.m. Christine Milligan, Commander, Raymond W. Harvey Post 703 gave a letter to Supervisor Dumas and read such letter that Post 703 of the American Legion is proposing to the Town Board that there are eight (8) cemeteries: Blossom Cemetery, #1 Quarry Road Cemetery, #2 Quarry Road Cemetery, Haskins Cemetery, Otis Cemetery, Needhamville Cemetery, Sly Pond Cemetery and VanWormer Cemetery that should be taken care of by the Town of Fort Ann according to the State Law's definition of abandoned cemeteries. Post 703 is willing to work with the Town Board in maintaining the above mentioned eight (8) cemeteries.

The Town Board will be sending a letter to Mr. Ray Wilson, before the next Town Board Meeting May 12, 2014, advising him not to let his cows on that 1.3 acres. Mr. Wilson did give permission for Skidmore College to go on that 1.3 acres by May 15, 2014 so the fencing has to take place by May 15, 2014.

Public Discussion was declared closed at 9:11 p.m.

Motion was made to go into executive session for personnel matters at 9:12 p.m.

Motion was made to come out of executive session at 9:37 p.m.

Meeting was adjourned at 9:37 p.m.

Total Abstracts: General \$62,368.04
 Highway \$30,119.08

Respectfully submitted,

Barbara J. Winchell, Town Clerk
Dated: April 17, 2014

