

MINUTES OF THE REGULAR MEETING OF THE FORT ANN TOWN BOARD HELD MAY 27, 2014

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

ABSENT: Councilman Denison

OTHERS PRESENT: Jeff Meyer, Town Attorney, Helen Denno, Confidential Secretary to the Supervisor, Barbara Winchell, Town Clerk, Paul Winchell, Highway Superintendent, Mark Miller, Enforcement Officer, Virginia Parrott, Historian, Bill Toscano, The Post Star, Joe Loszynski, Gene Connell, Richard and Diane Moore, Gene Ouderkirk, Maureen Barber, Arlene Green, Joan Degener, Christine Milligan, Nancy Moore, Debbie Camarota, Josephine Feit, Anya Tucker, Channel 10 news reporter

Supervisor Dumas called the meeting to order at 1:05 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 Councilman Varney, to accept the Meeting Minutes of April 14, 2014.

Motion was introduced by Councilwoman Stark, seconded by Councilwoman Witherell, to pay the bills as warranted and audited except Nichols Electric. There is a question about the mileage indicated on voucher submitted.

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 25 phone calls for the month of April. Supervisor Dumas thanked Christine Milligan for the organization of the Memorial Day parade.

Supervisor Dumas mentioned that the Planning Board Secretary, Leslie Barker, has created and placed Planning Board forms on line for those interested in obtaining forms and hopefully folks will find this convenient. She also mentioned that she believes Leslie did most of this, if not all, on her own time.

Supervisor Dumas stated that she spoke with Josephine Feit of Hadlock Pond Road regarding the Cedar trees that are located on Route 149. Supervisor Dumas advised that she did speak with Ian Miller, Resident Engineer, with NYS Dept. of Transportation in Hudson Falls, New York. Ian Miller advised Supervisor Dumas that the cedar trees are located on the homeowner's property and he has no desire to cut the trees and the sight distance was found to be adequate. Supervisor Dumas will ask Ian Miller to put his findings in writing to her. Ian Miller also advised Supervisor Dumas that the two (2) new signs for Moose Hillock campground were also adequate.

Supervisor Dumas asked Helen Denno, Bookkeeper, to run up-to-date budget reports.

Joe Loszynski has asked Supervisor Dumas to generate a letter to all property owners regarding the Lake Management process. Councilwoman Witherell requested that the Town Board members receive a copy of the letter.

Supervisor Dumas asked the Town Clerk for an update on the fishing/hunting license system. The Town Clerk advised that the Town was supposed to attend training in October of 2013 and since they didn't receive the State mandated training the Town Clerk's Office has been unable to sell fishing/hunting licenses since January 1, 2014. New York State Department of Conservation had advised that there should be an on-line training available in June or July of 2014 so the Town Clerk and Deputy Town Clerk plan on completing that training on-line and then New York State will provide the necessary equipment for the office to process fishing/hunting licenses. Councilwoman Witherell commented about being able to obtain a fishing license on line and the Town Clerk stated that she did find that out at Town Clerk Conference the last week of April. The Town Clerk Office is also suggesting to people to go to nearby towns that received the 2013 training as well as Dick's Sporting Good stores and Walmart to obtain fishing/hunting licenses that may not have access to computers.

Town Clerk's Report: Was given for the month of April 2014. The Town Clerk announced that she had passed the Notary Public exam that was given at the Town Clerk Conference the last week of April and the application and \$60.00 fee has been sent to the Secretary of State. The Town Clerk also advised that there is only one checking account for the Town Clerk Office. There had been two (2) checking accounts one for dog licensing and one for everything else but there was no reason to have two (2) separate accounts so the Fort Ann branch of Glens Falls National Bank has been notified that the dog licensing account will no longer be used.

Supervisor Dumas advised that the Harvester was paid for by the District and the District owns it. The Town Attorney is researching into whether it is necessary to have a Town of Fort Ann employee be the person to operate the Harvester. He doesn't believe there's any stipulation as to who operates the Harvester. It would be optimal if the District could operate the Harvester during days/times that are convenient for them since the Town of Fort Ann Highway Department is on a tight schedule Monday-Thursday. The Highway Department would provide training/guidance on how to operate the Harvester. Joe Loszynski stated that this system seems to be working in Cossayuna.

Public Hearing that was scheduled for May 12, 2014 will be re-advertised and scheduled for the June 9, 2014 Regular Town Board Meeting.

Public Comment was opened at 1:25 p.m. with Supervisor Dumas reminding those in attendance that the public comment portion of the meeting is meant for items on the agenda. With no comments being made public comment closed at 1:26 p.m.

Enforcement Officer, Mark Miller, reported that he has been very busy and probably has only toured about 1/3 of the Town of Fort Ann. He has signed building permits for Ace Carting and The Fort Ann Super Stop both businesses located on Route 149. There is interest in re-opening the Clay Hill campground and that was presented at the Planning Board meeting May 19, 2014. He stopped in to see the owners of 1253 Farley Rd. that live on Bentley Road and will be giving them the name of a company to take away vacant trailer on 1253 Farley Road. He stopped and spoke with Barbara Hart on Tripoli Road about her property being unsightly and as of today's date there has been improvement to the property. Mark will be following up with Jim Denton on Route 149 soon.

Mark explained why he submitted two (2) different mileage vouchers for the month of April with one being at the \$.40 rate and the other being at the \$.55 rate. The higher rate is what he receives with the Town of Hartford and would like to see the Town of Fort Ann raise the mileage reimbursement rate as soon as possible from \$.40 to \$.55.

The Highway Superintendent had the Town Clerk run an ad in The POST STAR April 28, 29 and 30th to accept sealed bids for a 1989 John Deere Model 2555 and a 2005 fisher 8'6 V Plow as surplus equipment. The Town Clerk read the ad that stated that the sealed bids must be marked "Bid for 1989 John Deere Model 2555" and/or "Bid for 2005 fisher 8'6 plow" must be filed in the Office of the Town Clerk, 80 George St., Fort Ann, NY no later than Noon Monday May 12, 2014. The Town Clerk announced that she had received four (4) plow bids and five (5) tractor bids and proceeded to open with the following results:

Bruce McFarlane, 55 Hatchery Rd., Gansevoort, NY 12831	\$1,205.00
George Thomas, 116 County Rte 17A, Comstock, NY 12821	\$1,111.00
Billy Winchell, Queensbury, NY 12804	\$ 300.00
Trishia TenEyck	\$ 551.00

The bid for V Plow was awarded to Bruce McFarlane for \$1,205.00. The Town Clerk will notify him.

George Thomas, 116 County Rte 17A, Comstock, NY 12821	\$6,111.00
Roland LaPointe, 374 Deweys Bridge, Whitehall, NY 12887	\$3,500.00
Bruce McFarlane, 55 Hatchery Rd., Gansevoort, NY 12831	\$3,067.00
Dave Dumas, 1371 Farley Rd., Hudson Falls, NY 12839	\$4,501.00
Jeffrey Bush	\$3,020.00

The bid for 1989 John Deer tractor was awarded to George Thomas for \$6,111.00. The Town Clerk will notify him.

Highway Superintendent's Report: The Highway Superintendent reported that his crew widened the road and removed brush and did ditch work on the following roads: Michigan Lane, Burquist Road and East Starbuck Lane. There are banks to be taken out on Cartier Lane. They have the mower apart and will be putting it back together since they are getting ready to use. Mr. Winchell advised that the 1998 International that the Town had purchased used from another Town can no longer be used because it has a cracked and broken frame but can't complain because they've gotten six (6) years use out of it. He wanted to wait until Fall of 2014 to replace it but has found something used to replace it in the \$50,000.00-\$70,000.00 range, which sounds like a lot but brand new the price could be as high as \$183,000.00. This truck would be used to plow snow. The Board gave Mr. Winchell permission to replace the 1998 International within the \$50,000.00-\$70,000.00 price range as well as put the 1998 International out to bid between \$5,000.00 - \$10,000.00. Mr. Winchell advised that with the money received from today's opening of bids he would like to put that money towards purchasing a backhoe which is approximately \$19,000.00.

Mr. Winchell advised that the highway department has been weed wacking the dam area and everything looks good. Supervisor Dumas stated that she received a phone call today from a dam organization out of Nashville and the breaching of the Hadlock Dam will be a topic of conversation.

Councilwoman Witherell advised that there have been two (2) emergency evacuation meetings. There is still a lot of work to do but wanted to take this opportunity to thank everyone that has participated. She also wanted to correct something that she said at the April 14, 2014 Town Board meeting in reference to receiving bad advice. She did not say who gave her bad advice and she wanted it in the May minutes for the record that it was not Mr. Richard Moore.

Councilman Varney stated that Supervisor Dumas answered his question/concerns about the trees on Route 149.

Councilwoman Stark advised that she attended a Streetscape meeting and the Town needs to purchase four (4) trees at \$300.00 each. Councilwoman Stark thanked the Highway Department for the work they performed at the Pilot Knob Beach. She announced that the Pilot Knob Beach would be officially opening June 28, 2014. There will be a historical bike tour on August 10, 2014 from Saratoga National Park to Mechanicville and back.

Resolution 47-14

APPROVING DISCONTINUANCE OF THE TERMINUS OF T. OWENS LANE

On motion of Councilwoman Witherell, seconded by Councilwoman Stark, the following resolution was ADOPTED –VOTE -

Ayes 4 Witherell, Stark, Varney, Dumas

Nays 0

Absent 1

IT IS RESOLVED, to approve the discontinuance of the terminus of T. Owens Lane

Attorney Meyer stated that the application has been submitted and read the Short Environmental Assessment Form pertaining to the discontinuance of a portion of T. Owens Lane to Supervisor Dumas who verified that all of the questions had been answered appropriately. Appendix B 617.20 Short Environmental Assessment Form is on file.

Historian Report: None

Correspondence: Supervisor Dumas read a May 9, 2014 letter from the Fort Ann Historical Society in support of preserving and protecting the integrity of Blossom Cemetery.

Supervisor Dumas read a May 21, 2014 letter received from William Bailey and Penny Gould, 34 Willis Ave., Ravena, NY 12143 regarding to their concerns about Bill S6649. A copy of this letter also went to Senator Betty Little since it was sponsored by Senator Little. They are opposed to the removal of property currently owned by Robert and Gloria Quinlan as well as any other property that has a similar location and relationship to the park District as the Quinlan property. They wish to be informed of when the Public Hearings required by S6649 are scheduled and want this letter to be considered as their formal protest against the removal of property located at 1440 Copeland Pond Rd. and other similar situated property from the Lake Hadlock Park District.

County update: Supervisor Dumas advised that she will be meeting with the Washington County Planning Department, Laura Oswald and Chris Debolt , about ideas regarding Fort Ann.

Public Discussion was opened at 2:10 p.m. Supervisor Dumas reminded those in attendance of the privilege of the floor parameters.

Josephine Feit, Hadlock Pond Road, wanted to know what could be done about the trees on Route 149. Supervisor Dumas spoke of this earlier and will follow-up with Mr. Ian Miller, NYS DOT, Hudson Falls for something in writing. Mrs. Feit would like a copy of the letter when received. Mr. Loszynski suggested that the town submit an official request for a road hazard report. Also, the Washington County Sheriff's Office can be asked to pay more attention to traffic conditions along Route 149.

Debbie Camarota addressed the board about the letter that went to Mr. Ray Wilson asking him not to allow the cows on the area and asks that the board now rescind that letter because the cows need to be outside. Mr. Wilson leases land and one of the businesses he leases to is Walker's. The Highway Superintendent will meet with Mr. Ray Wilson and Mr. Larry Bailey (Walker's) on May 28, 2014 regarding the area (it is approximately 30') where the cows need to enter.

Christine Milligan stated the Town of Fort Ann owns the cemetery. Mr. Wilson only owns to the burial ground. She also stated that the Historian hasn't finished her research and needs time to finish her research. Have to have off the tax maps at least six (6) months. It's got to be surveyed and she is unsure of the cost involved.

Diane Moore read the following to the board "I appreciate the opportunity to be heard regarding the Town of Fort Ann's 23% liability assessment to the Lake Hadlock Park District instead of to the entire town. In order to understand my points, I have to take you back in time for a bit of history. I promise you it will tie together in the end.

You may or may not be aware, approximately four years ago our lake harvester was removed from the lake by a previous Town board. The effort was spearheaded by then Supervisor Hall under the counsel of John Aspland's law firm stating it was inappropriate and illegal to operate the harvester under the Park District. Mr. Aspland stated the Park District was formed only for the dam and did not cover maintenance of the lakebed. After many months of legal maneuvers at a \$15,000 legal price tag, plus \$5000 wasted in Town expenses to oversee a vote that defeated creation of an Aquatic Plant District, not to mention the resulting damage to the lake by the spread of milfoil because the harvester was not allowed to be used which will involve over \$100,000 of future lake management expense, the Lake Hadlock Association and their attorneys were finally able to engage Mr. Aspland and Ms. Lais in a teleconference with the Office of State Comptrollers (OSC). I was a participant of that teleconference. Two attorneys from OSC were on the call and it was lead by Michael Kupferman of OSC. I would like to read you an excerpt from a letter written to the Lake Hadlock Association members summarizing the outcome of the teleconference.

At the outset, Mr. Kupferman asked the threshold question of do we have consensus on what is a park. In the case of Lake Hadlock, he pointed out that it includes a dam and a park and that it would be very odd to have a park district just for a dam. The Town has a Park District in place for maintaining a dam and ownership of the lakebed was transferred to the Town. The question was raised one more time by OSC – would it be correct to say the Park District includes both a dam and lakebed. The response by Mr. Aspland was that there is no consensus – in other words Mr. Aspland does not want to agree and his reason is that the lake has no public access.

The conference call clearly identified the obstacle to getting help for our lake. It is not OSC. It is John Aspland. So many times we have heard Gayle Hall and Kara Lais refer to the position of OSC that it is not legal for the harvester to remain on the lake and be paid for by the Lake Hadlock Park District. Mr. Kupferman and Ms. McDonald never said anything about illegal but several times asked for a consensus on what is the Park District and does it include a dam and a lake. In other words, an invitation by staff of OSC for the parties to agree that the existing Lake Hadlock Park District is all that is needed to operate the harvester and to manage the lake. The people who disagree with that position are the Town's representatives, not staff of the Comptroller's Office.

Having been through this history with Mr. Aspland and knowing his interpretation was not, in fact, sanctioned by the Office of State Comptrollers, I wrote an email to Darlene Dumas on August 17, 2012. Following are the pertinent portions of the email:

“...regarding the 23% Town liability, as I have communicated to you before, John Aspland’s creative interpretation on prior legal matters regarding the Dam and the Park District have much to be desired and have cost the Park District residents a tremendous amount of money. As a result I respectfully request that you obtain a second independent legal opinion... If history repeats itself, a second independent opinion for the Town is a must and only fair to the Park District residents.”

Darlene’s email response dated September 5, 2012 – “I spoke to a couple of attorneys as promised and one responded so far that what Aspland told me was correct regarding the bond issue. Sorry.”

I later found out in a phone conversation with Darlene that she HAD, in fact, asked the Association of Towns about the matter. What I am unclear on is what exactly was asked. Darlene’s email response refers to the *bond issue* and *not the assignment of 23% liability*. Granted this issue is very complicated. In fact Judge Krogman stated during the trial it was the most complicated trial he had presided over. I can sympathize a new supervisor with no prior Town law or political experience to draw on may not have formulated the question(s) needed for obtaining a precise response. I am further aware that Darlene did not have the exact law(s) cited by Aspland’s firm until after March 8, 2014 (this year). How could a law be reviewed by another attorney when Darlene did not have the exact law in hand?

Knowing I may not have received an accurate answer from Darlene, my husband and I turned to our attorney. Two letters were sent on two different occasions by our attorney to Mr. Aspland and Darlene Dumas. Our attorney stated in the second letter: “I am of the opinion that it would not be improper for the Town to assess, as a town wide obligation, an amount representing 23% of what is presently due and owing. In thinking about what might be the most expeditious way to resolve this dispute, I recall that the Comptroller’s Office has previously issued an opinion to the Town in connection with expending money for Hadlock Pond. I am requesting the Town request a further opinion from the Comptroller’s Office with regard to whether the payment of the aforesaid 23% would be appropriate in light of the jury verdict, or in fact would be a violation of some law. Neither letter was responded to by Darlene Dumas. Mr. Aspland informed our attorney upon follow up that he forwarded a copy of the first letter to Darlene and she ignored it. Neither Mr. Aspland or Darlene Dumas responded to the second letter requesting an OSC opinion. I ask each of you to consider the fact that Mr. Aspland’s legal interpretations were previously overruled by OSC. Could that possibly be a reason the letter was ignored?

In any event, I still did not have the exact law or laws that Mr. Aspland claimed make the debt illegal to assign to the entire Town despite the fact the jury verdict was against the “Town”.

Fast forward to April, 2013. A meeting took place with the attorney hired to represent the district residents, Mr. Aspland, Ms. Lais, Darlene, Richie Moore and Gene Connell. Still seeking the exact law(s) that make assignment of the debt from the jury verdict illegal. No information was obtained. Richie then asked Darlene to dinner to ask her to see the issue through until valid confirmation of Mr. Aspland’s decision was obtained – especially since Mr. Aspland’s prior interpretations of illegality were not, in fact, deemed illegal by OSC. As per Darlene, she did contact OSC, but was told she could not have

a written response. Again, I remind you Darlene did not have the law(s) cited by Mr. Aspland's firm until sometime after March 8th of this year. I applaud her attempt, but what question was asked if she did not have the exact Town law to question? Any question could only have been general in nature.

Frustrated that Darlene could not obtain an answer from OSC, my husband sent a letter directly to OSC. Specifically, he asked: Why should/are the Lake Hadlock residents saddled with the Town of Fort Ann's 23% liability? The jury found the Town of Fort Ann liable for the 23%, not the Lake Hadlock Park District. OSC's ANSWER: ...if you feel the ruling has not been appropriately applied, you should seek clarification from Town officials and if it is determined the Town's portion of liability should have been funded from the Town's general fund as opposed to being charged to the Park District property owners, the Town can always make provisions to reallocate/refund the costs funded by the Park District property owners. May I please point out to each of you that OSC did not say it was illegal for the liability to be assigned to the Town. I would think that if an OSC attorney knew it to be illegal, it would have stated outright? Instead they discussed provisions for reallocating/refunding costs.

This OSC response was provided to the Town Board members at the September 2013 Town Board Meeting. No response was made by anyone on the board at that time. In fact, no response was provided until last month's Town Board meeting. Finally, after 19 months of pursuit, Darlene finally provided the law (s) cited. She did not state in her letter that the law came from Mr. Aspland, I can only assume it did since Mr. Aspland continues to represent the legal matters involving the Park District. Guess what?? The law(s) provided in Darlene's letter cite NY Town Law 202 as the law preventing the Town from paying for improvements or replacements to damaged facilities within the Park District from the general fund. Darlene further provides a 2008 Comptroller opinion confirming that. I agree residents of the Town of Fort Ann should not have to pay for *reconstruction* of a dam in the District. That is not the issue. The unresolved issue is that the opinion provided in Darlene's letter does not address the Town's 23% liability that resulted from a JURY VERDICT against the Town of Fort Ann due to the Town's negligence equating to more than \$1,000,000.00. That is the question we posed to OSC that still has not been answered by the Town. I remind you our attorney is of the opinion the 23% liability **should not** be a Park District expense.

So why am I reciting all this to you? I have shared with you that OSC did not agree with Aspland's firms' interpretation of the harvester operation being illegal. Incidentally, the interpretation turned out *not to be illegal or inappropriate* was based on the same law being cited as what makes the 23% liability to the Town illegal: Town Law 202. I find that ironic and I ask you if history is repeating itself? Shouldn't the firm's legal interpretation of Town Law 202 be subject to OSC review once again?

One last point. Darlene cited resolutions made by the Town Board in 2006 holding the Park District responsible for the cost of dam reconstruction. I have since obtained copies of those resolutions. The resolutions refer to reconstruction of the dam. The resolutions fail to state any liability costs resulting from the Town's negligence as a result of a jury verdict to be included in reconstruction costs. In fact, the trial had yet to take place when the resolutions were approved. Is Mr. Aspland's firm disguising the jury verdict as construction costs? Those costs never would have existed for the Park District had the Town not been found negligent for its actions as well as its failure to have the dam properly insured.

I am asking this Town Board to relieve the Park District residents of the wrath of Mr. Aspland's law firm, and proceed to OSC for an objective and final opinion on this matter. It has been pending too long. I further ask that the Town obtain independent objective representation for the Park District when corresponding with OSC on this matter. I stress that Jeff Meyer, Matt Fuller and/or Jim Burns' opinions,

no matter how competent, cannot be considered objective due to their past and/or current affiliations with Mr. Aspland's firm. I believe seeking an answer from OSC is the only cost effective, speedy way to obtain an objective opinion and put this issue to rest. Judging from the tone of Darlene's letter last month, she has taken this issue personally when, in fact, all along the question has been whether or not Mr. Aspland's law firm's legal interpretation is correct, not hers. A valid question given the Town's 23% liability amount totals more than \$1,000,000.

Thank you for your time."

Public Discussion was declared closed at 3:29 p.m.

Motion was introduced by Councilwoman Witherell, seconded by Councilman Varney, to adjourn meeting at 3:30 p.m.

Total Abstracts:	General \$ 7,189.67
	Highway \$34,525.39

Respectfully submitted,

Barbara J. Winchell, Town Clerk
Dated: May 29, 2014