

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

PRESENT: Supervisor Darlene Dumas
Councilwoman Gretchen Stark
Councilman Floyd Varney
Councilwoman Deborah Witherell
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, Bill Toscano of The Post Star, Richard Moore, Arlene Green, Josephine Feit, Reed Winchell, Kim Bender, Dave Dumas, MaryLou and Brian Douglas, Don Ballard, Dale Grinnell

Supervisor Dumas called the meeting to order at 7:04 p.m. with the pledge of allegiance and a moment of silence was held for Fort Ann deceased residents.

Motion was introduced by Councilwoman Stark, seconded by Councilwoman Witherell, to accept the Meeting Minutes of June 9, 2014.

Motion was introduced by Councilwoman Witherell, seconded by Councilwoman Stark, 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 numerous emails and approximately 30 phone calls for the month of June. One of the phone calls she received was regarding handicap parking in front of the Town Hall from a gentleman that lives towards Whitehall. It appears that the handicap sign will be placed in front of the apartment building next to the Town Hall near the handicap ramp attached to the Fort Ann Town Hall.

Supervisor Dumas stated that the town has received the \$5,000.00 check for the Community Center Site Selection Study that was completed in August 2011. She completed and submitted the necessary forms, from a grant that the previous Town Administration had started but hadn't completed.

Supervisor Dumas mentioned that the slow and tedious job of hand harvesting has begun with Lycott but there was a mechanical problem. The Highway Superintendent stated that the parts were ordered, received and it's back in working order and expect the Harvester to resume again on July 30, 2014.

Supervisor Dumas contacted Senator Little's office after the June Town Board meeting and spoke with Senator Little, as recently as today, about the cedar trees on Rte 149. Senator Little suggested that Supervisor Dumas write a letter to Joe McDonald, Commissioner of NYS Dept. of Transportation because DOT has spoken with the homeowner and he has no desire to take down any of these trees. Recently there was a bad storm and a couple of the trees did come down but there are still trees needing to be removed. Senator Little was concerned about placing a red light at that intersection as that could cause there to be more MVA's in that area. Mr. Reed Winchell, retired from the NYS DOT after 31 years, suggested contacting Ian Miller at the Hudson Falls DOT location and the trees that fell due to the storm should be put through a chipper rather than lying on the side of the road. The Highway Superintendent suggested a flashing sign "Campground ahead" about a mile before the Moose Hillock campground to

slow traffic down. Mrs. Feit would like to see a red light at the Hadlock Pond and Route 149 intersection.

Supervisor Dumas suggested setting up a cemetery committee and have Councilman Denison be the Chairman. She already had contacted Christine Milligan and George Sherwood of Raymond Harvey Post about being on this committee. Mr. Dale Grinnell and Mrs. Arlene Green who are in attendance at tonite's meeting volunteered to also be on this committee. Supervisor Dumas suggested having a Fall 2014 deadline for this committee to report on conditions and recommendations of Fort Ann cemeteries. This Fall 2014 deadline will coincide with the 2015 budget process. Supervisor Dumas will send Councilman Denison an email outlining this committee's duties and contact information for those that have expressed an interest in being on this committee.

Supervisor Dumas and Councilwoman Stark met with Washington County Planner, Chris Debolt, and Economic Director, Laura Oswald, June 10, 2014 regarding economic development for Fort Ann. They got some ideas but need to ask the Town Board members about the direction they see for the Town of Fort Ann. They will have a follow-up meeting with Washington County Planning/Economic Development Department.

Supervisor Dumas announced that the 2015 budget process will be starting soon. She will update the memo that is given to each department to include the budget workshop(s) information so that information is clearer and to remind everyone that a request is simply a request.

"Before going further, I would like to take a few minutes to once again address the questions surrounding the Hadlock Dam breach and the so-called "23%". There are three points I want to address:

1. The nature of the 23% liability itself
2. Mr. and Mrs. Moore's constant calls for involving the Office of the State Comptroller and also hiring an independent attorney
3. Where we go from here.

First, the 23%. There seems to be a great deal of confusion regarding the 23% and what it means. Simply stated, the jury found the Town 23% liable for the dam collapse and assigned 23% of the responsibility to the Town. This has nothing to do with the debt incurred for the reconstruction of the dam but rather for the claims made by independent parties for damages as a result of the dam collapse.

Currently the Town's 23% liability is 23% of the value of the upstream and downstream claims. The total of those claims has yet to be determined and may be zero. The Court recently dismissed several plaintiffs and there is an outstanding motion to dismiss all of the remaining claims. If that motion is granted, the Town will owe nothing more. Any claim that the Town's 23% liability amount totals more than \$1,000,000 is an inaccurate statement and is also disingenuous.

Some claims have been settled and the Town did pay its portion of those. For example, Mr. and Mrs. Moore sued the town. Their lawsuit was settled in 2012 and they received their payment. That payment was funded by the hard-earned money of all of the Town's taxpayers, rather than just those who live in the District or those who live in the rest of the Town. All of the claims that were paid and all of those that the Town may be liable for in the future were and will be paid for by the Town as a whole. The 23% liability has been and will continue to be funded by the entire Town – not just the District as the Moore's would have us believe.

Let me reiterate: the 23% liability applies only to any outstanding claims, not to the cost of reconstructing the dam itself, and the total the Town owes may be zero if the motion to dismiss is granted. Any claims paid by the Town will be paid by the entire Town, not just the District.

Second, Mr. and Mrs. Moore have repeatedly called for the Town Board to ask the Office of the State Comptroller (OSC) for an objective opinion on the 23%. They would have you believe that we have done nothing in regard to that request.

The Office of the State Comptroller does not provide legal advice. Any opinion they do render will likely contain language to the effect that their response is based solely on the information provided, and to seek the opinion of Town Counsel. They will provide guidance and advisory opinions, but they are just that, non-binding advice designed to assist municipalities, but not replace independent research. Ultimately, the Town is responsible for defending its own decisions.

When I did personally contact the OSC, they told me to seek the counsel of the Town's Attorney. Let me reiterate that. The Moore's continue to ask that the Town seek an opinion from the OSC but when I asked the OSC for exactly that, they told me to contact the Town Attorney instead. The Moore's would have you believe that their requests have been ignored but I assure that they have not been.

Since 2012, the Town has sought the counsel of three separate law firms. All three of these law firms have good reputations, all three represent other towns in Warren and Washington County, and all three have been ethically bound to represent the Town honestly and competently. The advice we have received from these firms is constant and consistent and in agreement: **if** and **when** the Town is required to pay as a result of the failure of the dam, those charges/damages would be properly assessed against the district, as well as the non-district properties. In other words the whole Town would be responsible.

The Moore's do not like this opinion and continue to fight against it. The Town has spent thousands of dollars in legal fees responding to Mr. Moore's accusations. At this point, the Town needs to draw the line on spending money on legal fees and pursuing individual vendettas. It's costing the taxpayers of the Town – including every taxpayer in the district – hard-earned money to continue responding to Mr. Moore's accusation. Enough is enough.

No one from the district – including Mr. and Mrs. Moore – has submitted any legal opinions or memoranda of law to refute the opinions the Town has received from all three law firms. Hiring yet another law firm to provide a fourth opinion would be a waste of time and money. The taxpayers should not have to bear this unnecessary cost simply because Mr. and Mrs. Moore do not like the opinions of the Town's attorneys or the law that supports those opinions.

Mr. and Mrs. Moore are free to hire their own attorney. They are also free to query the OSC and, evidently, they have been in communication with the OSC. Yet neither they nor any other party have come back with any legal opinion stating that the opinion of the Town's three law firms is in error.

Finally, where do we go from here?

First, this Board passed a declaration that we would not allow any further public comment on the 23% during Town Board meetings. This declaration was in response to abusive comments made over many,

many months, comments that often came perilously close to slandering me, slandering our attorneys, and slandering other members of the Town Board. I was asked over and over by members of the public to “shut Richie Moore down” but I declined to do so because I consider the ability of the public to honestly and openly address its government to be an important, fundamental American freedom. Yet there comes a point when any deliberative body needs to move on and we, as a Town Board, have reached that point with the 23%.

If there is any change in facts, any change in law, even any change in legal opinions, then we as a Town Board will rightly consider those changed circumstances. If the judge issues a ruling that affects our decision or orders us to take some action, then we will of course comply or will alter our decisions as needed to comply. If someone steps up with a legal opinion provided by an attorney that states that the opinion of our attorneys is incorrect, we’ll provide that opinion to our attorneys and ask them to respond to it.

But barring such a change in circumstances, we have wasted enough of the taxpayers’ time and money on Mr. and Mrs. Moore’s charges”.

Town Clerk’s Report: Was given for the month of June 2014. Supervisor Dumas asked the Town Clerk about dog licenses and the Town Clerk stated that she reminds people when they come in for marriage licenses, for instance, that if they have dog(s) they need to license them also. The Town Clerk mentioned that Nancy Quell, Animal Control Officer, is considering an enumeration for the Town of Fort Ann the Fall of 2014. She has done this in other towns and has been quite successful in getting unlicensed dogs licensed with the various Towns.

Public Comment was opened at 7:29 p.m. with Supervisor Dumas realizing there were a couple of new faces in the audience so she reminded those in attendance that public comment is meant for items on the agenda. Mr. Moore commented on the letter that Supervisor Dumas read and asked why did it take 19 months to discuss this? With no other comments being made public comment closed at 7:30 p.m.

Highway Superintendent’s Report: The Highway Superintendent stated with all the recent storms his crew has been very busy with roads washing out and have had overtime. They are getting ready to blacktop East Starbuck Lane.

Mr. Winchell stated he went to Allegheny County July 8th to make an offer on a truck but another offer had been made that was higher than his so he thinks he found another truck today with the Village of Leroy (Rochester) that would be between \$55,000-\$65,000.00. Supervisor Dumas stated she was going to ask Attorney Meyer about borrowing money. Mr. Winchell will be on vacation the week of July 21st.

The Town Clerk read the legal notice that appeared in The Post Star June 9, 10, and 11, 2014: Town of Fort Ann, Washington County, New York SALE of 1998 International Tandem Dump Truck NOTICE IS HEREBY given that the Town Board of the Town of Fort Ann had deemed a 1998 International Tandem Dump Truck as surplus equipment; such surplus equipment is hereby offered for sale “as is”. A list of specifications of this vehicle is available at the Town Highway Dept. Monday-Thursday 6:00 a.m. – 4:00 p.m. The Town of Fort Ann has the right to reject any and all bids. Sealed bids must be filed in the Office of the Town Clerk, 80 George St., Fort Ann, NY no later than NOON on Monday, July 14, 2014 Bids will be opened at the 7/14/14 Regular Town Board Meeting @ 7:00 p.m. Any questions call (518) 639-8950. Paul Winchell, Highway Superintendent.

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| Walker Farms, LLC, 5565 State Rt. 4, Fort Ann, NY 12827 | \$11,000.00 |
| Bruce McFarlane, 97 Masters Common North, Queensbury, NY 12804 | \$ 9,103.00 |
| Charles Friedman Excavating, Inc., 54 North St., Hudson Falls, NY 12839 | \$ 8,325.50 |

Resolution 51-14

ACCEPT BID FROM WALKER FARMS, LLC FOR 1998 INTERNATIONAL DUMP TRUCK

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 accept \$11,000.00 bid from Walker Farms, LLC for 1998 International Dump Truck.

The Town Clerk read the legal notice that appeared in The Post Star June 9, 10, and 11, 2014: The Town of Fort Ann Highway Dept. is looking for a used 4 wheel drive backhoe. Specs are available at the Fort Ann Highway Dept. Monday-Thursday 6:00 a.m. – 4:00 p.m. Any questions call (518) 639-8950. The Town of Fort Ann has the right to reject any and all bids. Bids will be opened at the 7/14/14 Regular Town Board Meeting @ 7:00 p.m., Paul Winchell, Highway Superintendent.

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| John Davis, PO Box 138, Kattskill Bay, NY 12844 | \$19,000.00 |
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Resolution 52-14

ACCEPT BID AND PURCHASE BACKHOE FROM JOHN DAVIS

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 accepts the \$19,000.00 bid from John Davis, PO Box 138, Kattskill Bay, NY 12844 for 1995/96 Ford New/Holland 555D Backhoe Loader 4 wheel drive ID #A436141 and authorized the purchase of such.

Councilwoman Stark thanked the Highway Superintendent and his department for the work they performed at the Pilot Knob Beach to get it ready for the summer season. Swimming lessons have started. The Highway Superintendent stated that the portapotties are not located this year where they were last year but that means there are an additional two parking spots. Councilwoman Stark said she was not able to attend the Sr. Citizen picnic on July 11, 2014 but heard it was a big success.

Councilwoman Witherell reported that there is an Emergency Evacuation Preparedness meeting July 17, 2014 and wanted to take this opportunity to thank everyone again that is involved in this.

Councilman Varney received a request, from a Hadlock Pond resident, about a caution pedestrian sign at the intersection of Rte 149 and Hadlock Pond Road.

Councilman Denison asked Supervisor to readdress the zoning situation in Fort Ann. He explained that zoning is a four stop approach and this was discussed three or four years ago and needs to be discussed again so that the corridors of Fort Ann (Route 4, Route 22 and Route 149) can be enhanced. He is hoping that there may be some grant money available for the Town and Village to work together on infrastructure.

Mark Miller, Enforcement Officer, reported that he has been very busy with reviewing and approving building permits that have been submitted for garages, pre-fab garages, refurbishing buildings, new homes. He has been playing phone tag with Mike Morrissey. He believes it would be best if Mr. Morrissey went back to the Planning Board for a site plan review.

He stated he has a lot to do and continues to prioritize his work as it comes in.

Historian: No report

Old business: None

Discussing pursued regarding signage in the Town of Fort Ann. Supervisor Dumas stated she received samples from Town of White Creek and Town of Easton regarding their sign laws but hasn't had an opportunity to review them. Signage should be a part of site plan review. The Enforcement Officer stated the Town of Hartford has a signage law and can be obtained from the Town of Hartford website. Attorney Meyer pulled up the Town of Hartford website and read it.

Attorney Meyer stated that the Local Law regarding existing fee schedule for travel trailers can be amended by resolution at the next Town Board meeting. It was proposed for the next meeting increasing the existing rate from \$2.00 per lot to \$5.00 per lot (page 22).

Supervisor Correspondence: Supervisor Dumas received a notice from the Greenwich Journal that it will no longer be free. There will be a \$36.00 annual fee.

Supervisor Dumas received ProAct information and asked the Town Clerk to place on the community bulletin board. Supervisor Dumas received a schedule from the Washington County Parks and Recreation Department about the Hewlett's and Lake Lauderdale Parks summer hours and asked the Town Clerk to place on the community bulletin board. Supervisor Dumas had the Town Clerk read the following resolution:

Resolution 53-14

RESOLUTION URGING TIME WARNER CABLE, AND POTENTIAL NEW CABLE OPERATOR COMCAST, TO INCLUDE MOUNTAIN LAKE PBS AS PART OF FUTURE COVERAGE FOR WARREN AND WASHINGTON COUNTIES AS WAS ESTABLISHED BY THE UNIVERSITY OF THE STATE OF NEW YORK PROVISIONAL CHARTER FOR MOUNTAIN LAKE PBS.

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

Ayes 5 Denison, Stark, Dumas, Witherell, Varney

Nays 0

IT IS RESOLVED, that the Town of Fort Ann shall forward copies of this resolution to Governor Andrew M. Cuomo, Senator Charles Schumer, Senator Kirstin Gillibrand, Representative Bill Owens, Senator Betty Little, Assemblyman Dan Stec and all other deemed necessary and proper, asking for their support of this resolution.

Public Discussion opened at 8:37 p.m. Councilman Denison advised that he had been at Senator Little's office and hand delivered a letter regarding the traffic concerns on Rte 149 as a private concerned citizen not as a Town Board member. He also stated that the more people that correspond with Senator Little on this matter the more attention it will receive.

Mr. and Mrs. Brian Douglas own property on George Street, next to the Catholic Church, and would like the end of driveway curbing restored to the condition it was prior to the sidewalk work being done currently. Attorney Meyer stated this is a neighbor to neighbor dispute not a Town issue and that the Mr. and Mrs. Douglas should seek the advice of an attorney if they haven't already done so. Supervisor Dumas stated she would speak with Chris Roe, DOT, and Father Torres.

Public Discussion was declared closed at 9:00 p.m.

9:01 p.m. motion was made by Councilman Varney and seconded by Councilwoman Witherell to go into executive session to discuss pending litigation.

9:35 p.m. motion was made by Councilwoman Witherell and seconded by Councilman Denison to come out of executive session with the following items being discussed and voted on:

Resolution 54-14

RECOGNIZING THAT THE PART-TIME ENFORCEMENT OFFICER HAS SUCCESSFULLY COMPLETED HIS 90 DAY PROBATIONARY PERIOD

On motion of Supervisor Dumas, seconded by Councilman Denison, the following resolution was ADOPTED – VOTE –

Ayes 5 Dumas, Denison, Stark, Varney, Witherell

Nays 0

IT IS RESOLVED, that the Fort Ann Town Board hereby recognized that Mark A. Miller, Part-time Enforcement Officer, has successfully completed his 90 day probationary period and as such, shall serve the remainder of his appointed term which will expire on 12/31/14.

Resolution 55-14

RESOLUTION APPROVING THE STIPULATION OF SETTLEMENT AND ORDER RELATIVE TO THE ENCLAVE AT LAKE GEROGUE, LLC v. MARY ELLEN PIERCE, et. al. BEARING WASHINGTON COUNTY SUPREME COURT INDEX NO. 22255

On motion of Supervisor Dumas, seconded by Councilwoman Stark, the following resolution was ADOPTED – VOTE –

Ayes 5 Dumas, Stark, Witherell, Denison, Varney

Nays 0

IT IS RESOLVED, that Meyer & Fuller, PLLC is authorized to execute any and all documents pertaining to the settlement of the Article 7 petitions reducing the assessment on property bearing tax identification numbers: 82.-1-12.9, 82.1-12.10, 82.-1-12.11, 82.-1-12.12, 82.-1-12.13, 82.-1-12.14, 82.-1-12.15, 82.-1-12.5, and 82.-1.12.4.

Motion was made by Councilman Denison and seconded by Councilwoman Witherell to adjourn meeting at 9:40 p.m.

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| Total Abstracts: | General \$ 15,185.10 |
| | Highway \$ 118,441.18 |
| | Youth \$ 100.00 |

Respectfully submitted,

Barbara J. Winchell, Town Clerk
Dated: July 18, 2014