

TOWN OF GOSHEN
TOWN BOARD MEETING

May 12, 2011
MINUTES

A regular meeting of the Town Board of the Town of Goshen was held on the 12th day of May, 2011 at 7:30pm at Town Hall located at 41 Webster Avenue, Village of Goshen, County of Orange, State of New York.

Present:	Douglas Bloomfield	Supervisor
	Philip Canterino	Councilman
	George Lyons	Councilman
	Kenneth Newbold	Councilman

Absent:	Louis Cappella	Councilman
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Also Present:	Dennis Caplicki	Attorney for the Town
	Priscilla Gersbeck	Deputy Town Clerk

A. CALL TO ORDER

The meeting was called to order by Supervisor Bloomfield at 7:34 pm, followed by the Pledge of Allegiance.

Supervisor Bloomfield requested a moment of silence for a fellow Goshenite, Frankie DeGeorge, who passed away yesterday of Lou Gehrigs Disease.

B. AMENDMENT TO THE AGENDA

C. PRIVILEGE OF THE FLOOR (agenda items only)

None at this time

D. PUBLIC HEARING

Councilman Newbold made the motion to open the Public Hearing for the Citizens of Hambletonian Park and Arcadia Hills regarding the proposed sewer rate changes. The motion was seconded by Councilman Lyons.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

Supervisor Bloomfield gave a brief history as to why the sewer rates were separated from the water rates at a previous meeting. Bill Standish, Budget Officer, was waiting for a response of requested sewer rates from the Village for the next four quarters. The Village replied, wanting a 22% increase to assist in payment to move the dirt pile. The Town's opinion is that it is inappropriate to collect for this expense and is in arbitration. Consequently, the Town proposed the following sewer rate increase for Hambletonian Park (166 homes): net average increase per household per quarter of \$6.50, net percentage increase of 8.75%. The proposed sewer rate increase for Arcadia Hills (256 homes): net average increase per household per quarter is \$7.66, net percentage increase of 8.75%. The increase covers legal fees and for accruing dollars towards I & I (inflow and infiltration) repairs. For example, Hambletonian Park has pipes over 50 years old with cracks in them. The seals over the manholes are leaking. The Town has decreased the I & I in Hambletonian Park by 12.8% and the I & I in Arcadia Hills by 22% in the past two years. Even though the Town has been working on I & I repairs there is much more to do.

On May 18th there will be a Public Hearing for the residents in Hambletonian Park on expanding their water and sewer district to include the proposed 75 homes of NY Farms (aka Heritage Estates).

To help cut costs Broderick Knoell, Highway Superintendent, was recently appointed to be in charge of the Water & Sewer Department. His education in mechanical engineering will be beneficial, along with the skilled employees, to that department.

Supervisor Bloomfield called for comments from the Public.

Unidentified Male: Questioned why the Town refuses to help pay for moving the landfill.

Response: Currently the arbitration proceeding must resolve the costs that the Village incurred *twice* are not a proper expenditure to be passed along to the Town residents? The Town has never used this landfill and/or property.

Unidentified Female: At a previous meeting the Mayor stated that the Village residents are charged 10% and the Town residents are charged 12%. Why is there a 2% difference?

Response: Not sure what the Mayor was referring to. The Town pays a 10% surcharge to the Village for access to their Sewer Plant. The Town also pays 15% to the Village for the sewer plant operational costs.

Unidentified Male: wanted clarification to the proposed rate increase effective 08/01/2011. How does it affect the 2010 billing cycle? The sheet shows \$174 home/qtr (Hambletonian Park) is 2010 done?

Response: The Town is told a year in advance how much to collect. Therefore, when the payment comes in, we know how much to charge. Supervisor Bloomfield compared billing cycles using Arcadia Hills development.

How do the residents in Hambletonian Park know that their water/sewer is tabulated at the sewer plant and that other outlying homes are not tapped in?

Response: There is a meter in Hambletonian Park where the readings are done daily. This is submitted to the Village at the end of the year. This is monitored very closely.

Explain why there is so much I & I in Hambletonian lines. I still can't use the water.

Response: There are many holes and cracks in the pipes due to the age of the system. When it rains, the water table rises into the holes and cracks. The sewage is more than 2 1/2X on a meter reading on a rainy day than on a dry day.

John Mungo, Fleetwood Drive: Questioned why there are lines in the road of the main entrance into Hambletonian Park.

Response: They mark a sewer line breakage which is to be dug up and replaced tomorrow.

Unidentified Female: When is the inflow supposed to stop?

Response: When all of the lines are replaced. This will be too expensive. Other than disconnecting sump pumps, other options are in motion. The next meeting with NY Farms will determine what contributions will be offered to hook up to Hambletonian Parks' water/sewer system. Another solution is using the rate increase to accumulate monies to replace old lines with lines made of new materials. The improvements to the system will be done according to what is affordable. The residents of each water/sewer district are responsible for repairs to their systems – not the general public.

Unidentified Male: How is the 10% surcharge added to their bill?

Response: This was part of an agreement signed between the Town and the Village 50 years ago. The Village residents bought and built their plant. When Hambletonian Park joined in, the 10% was added on.

Unidentified Female: Do we have enough water to supply the proposed 75 additional homes?

Response: Yes, at the meeting on the 18th an engineer will explain how you may even acquire more water than you currently have.

Unidentified Male: Will additional homes be built behind Arcadia Hills? In the past, there has been several times where a severe drought took place.

Response: The builder is working on other subdivisions, so Arcadia Hills is on hold. The builder will have to demonstrate that there is enough water to support new homes before they can get approval.

Geri Corey: inaudible

Councilman Newbold made the motion to close the Public Hearing for the Citizens of Hambletonian Park and Arcadia Hills in regard to proposed sewer rate changes. Councilman Lyons seconded the motion.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

(Change in agenda order)

E. OLD BUSINESS:

1. DISCUSS VILLAGE OF GOSHEN'S LATEST REQUEST FOR "RE-ARGUMENTING" A PRIOR MOTION TO ARBITRATE JOHN CAMERON AS A LEGAL MANEUVER TO PREVENT ARBITRATION OF THE VILLAGE/ TOWN SEWER DISPUTE

Attorney Caplicki summarized the situation. Over a year ago, the Village billed the Town over the estimated amounts for 2008 and 2009 years. The Town submitted payment as to what was believed to be fair. Monies were withheld for charges that we thought not to be appropriate. The Village initiated a legal action in the Supreme Court to collect the shorted monies. After six months, as per the contract terms, the Town received a court ruling that the matter was not to be litigated, but was to be arbitrated. After the arbitration started, the Village raised the issue that the doctrine of separation of powers prohibits any judicial review of any legislative decision that the Village made in connection with the construction of the sewer plant. Therefore, the Town had to Brief the issue of separation of powers. About 10 days ago, the ruling was that the arbitration was to go forward and that technically speaking the Town was not to directly contest the decision to build the sewer plant.

The Town has never contested the Village's right to build a new sewer plant. What we are contesting is some of the methodology the Village used to bill the Town and what was included in the bills. Today, the Village submitted more legal (10 page) documents, to John Cameron (Arbitrator) that they would be allowed to reargue the issue of separation of powers. The request for reargumentation is going to allow the issue to be rebriefed again. The Village is following multiple legal paths to contest any decision. The issue will still be whether the arbitration can go forward. Supervisor Bloomfield spoke with the Mayor today. "Win, loose or draw, let's get on with this arbitration". "These legal maneuvers are put there so that you will not have your voice heard." "This is not a good thing for all of us." Putting off the decision is costing people money for accountants, engineers, attorneys and legal fees etc. This money can well be spent repairing the sewer system. This is not about like or dislike for the people in the Village. It is about working together to resolve an issue.

The Supervisor called for comments from the Board Members:

Councilman Canterino "Do we have an endless source of money to pay all of these legal fees?" He lives in the Village and would be suing himself. He noted that it would be cost effective to use the arbitrator, follow his decision to resolve this issue. Every time the Village files another tactic to the law suit, it divides the whole community. "We all want this thing to end." "It's absolutely ridiculous". He feels that the legal fees will become higher than the actual amount that we are in arbitration for.

Supervisor Bloomfield feels that the billing rationale is inappropriate. The NYS Comptroller's financial audit report alluded to the fact that the Town has been overcharged and that the relocation of the landfill (dirt pile) wasn't planned out very well. The initial cost of the sewer plant is *around* \$32 million dollars which is turning out to be *around* \$40 million dollars.

Councilman Newbold is disheartened by the legal hurdles that the Village is putting into this. A few months ago the Village proclaimed a great victory of winning a \$50,000 lawsuit. However they spent \$260,000 in legal fees to do so. This can be so simple. It's another attempt that your voices are not to be heard by the Village of Goshen.

Jerry Boss: We are far exceeding the \$187,000 owed by adding on the legal fees. Did the Town have input into building of the sewer plant? (No) Did the Town have input as to what the electric bill is to run that plant? (No) Is the Town being billed for part of the salaries of the employees who maintain the plant? (Yes) "So we have a car without an engine." "There's something wrong here." "There's something beyond the \$187,000 here." "What is the end to it all?"

Supervisor Bloomfield stated that everything was going along fine until the Village borrowed \$32 million dollars to build the sewer plant, plus another \$10 million to dispose of the dirt. Add the interest to all of this and you're talking about a lot of money which has been spent and needs to be paid back.

The Village needs to stop this game. We want the arbitrator to listen to both sides, make a decision and let's move on. The citizens in the Village need to talk to their Trustees and ask them to stop spending their taxpayer dollars on this.

Councilman Lyons simply put, we *both* (Town & Village) agreed to arbitration. Once new Attorneys partnered with the Village Attorney, David Donnelly, excessive amounts of paper work and legal fees

were filed not to arbitrate. In his opinion, the Village isn't willing to give up a dime. Once they do so, the price drops back for a new base line. The Village wants the full amount. He agreed with the other Board Members in win, lose or draw, let's move on. There are other issues with the Village that we need to work on together. "Stop spending this money stupidly". "You think that you have a bottomless pit when you are dealing with tax money, but you don't." "Those days are over."

Joel Markowitz Is this really about the future of the IMA with the Village?

Response: It will certainly be the base.

Comments: It could also be the integrity of the law firm who is afraid to lose. Who is in control? the Village Board or their Attorneys? The Village debt is around \$60 million compared to the Town debt, which is around \$3 million and the Village has less residents.

Councilman Newbold made the motion to accept the proposed sewer rates for Hambletonian Park and Arcadia Hills as presented. Councilman Canterino seconded the motion.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

2. DISCUSS AND APPROVE REQUEST BY B.C. STAUDT TO USE PUMPKIN SWAMP ROAD FOR A FILMING PROJECT

Supervisor Bloomfield removed this from the agenda. We have had no further communication from B.C. Staudt.

3. REVIEW A DRAFT OF THE TOWN OF GOSHEN "EVENT PERMIT APPLICATION"

Priscilla Gersbeck, Deputy Town Clerk, submitted her revised Event Permit Application to the Board Members. She has been working on this to coincide with the Public Assemblies Local Law #1 of 2011 which is currently under review. The permit application cannot be acted upon until the Local Law is passed. However, it can be used for a base. Attorney Caplicki will review the permit application to get the process rolling.

4. APPROVAL OF MINUTES

Councilman Newbold made the motion to approve the work session minutes of 04-11-2011 and regular meetings of 03-24-2011 and 04-14-2011. Councilman Canterino seconded the motion.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

***** Note: Councilman Lyons abstained from voting on 03-24-2011 minutes and submitted corrections to the Clerk. *****

F. NEW BUSINESS:

1. REVIEW AND APPROVE A RESOLUTION TO SETTLE A TAX CERTIORARI WITH NEWPORT ONE.

Attorney Caplicki stated that the following motions each have a copy of the judgment attached, which is available for review in the Clerk's Office.

**TOWN OF GOSHEN
RESOLUTION**

Settling of Tax Certiorari Claim; Newport One, Inc. v. Joann Soules, as Assessor of the Town of Goshen and the Town of Goshen

INTRODUCED BY: Councilman George Lyons

SECONDED BY: Councilman Philip Canterino

DATED: May 12, 2011

At a meeting of the Town Board of the Town of Goshen, County of Orange, State of New York, held at Town Hall in said Town on the 12th day of May, 2011;

WHEREAS, Newport One, Inc. has previously initiated against Joann Soules, as Assessor of the Town of Goshen and the Town of Goshen a tax certiorari proceeding for assessment year 2009 under Index No. 2009-12865, and

WHEREAS, it appears from the recommendation of the Town Assessor, the Town's Appraiser, and Dennis P. Caplicki, Esq., Counsel for the Town of Goshen in the aforesaid proceeding, upon a thorough investigation of the claims that further proceedings and litigation with the Town would involve considerable expense with the attendant uncertainty of the outcome and that the settlement of the above matter as more fully set forth in the annexed proposed Consent Judgment/Stipulation of Settlement is reasonable and in the best interest of the Town, and

WHEREAS, petitioner, Newport One, Inc., is willing to settle these proceedings without interest, cost or disbursement, in the manner as set forth in the annexed Consent Judgment/Stipulation of Settlement,

NOW, THEREFORE, BE IT RESOLVED, that the proposed settlement as set forth and described above is hereby accepted pursuant to Section 68 of the Town Law; and it is further

RESOLVED, that JoAnn Soules, Assessor of the Town of Goshen, and Dennis P. Caplicki, Esq., be and they hereby are authorized to sign or execute any and all documents necessary to effectuate this resolution.

Upon Roll Call Vote:

Supervisor, Douglas Bloomfield	<u>AYE</u>	Councilperson, Philip Canterino	<u>AYE</u>
Councilperson, Louis Cappella	<u>ABSENT</u>	Councilperson, Kenneth Newbold	<u>AYE</u>
Councilperson, George Lyons	<u>AYE</u>		

Vote: Resolution carried by a vote of 4 to

2. REVIEW AND APPROVE A RESOLUTION TO SETTLE A TAX CERTIORARI WITH MINOLTA, INC.

**TOWN OF GOSHEN
RESOLUTION**

Settling of Tax Certiorari Claim; Minolta Advanced Tech v. Board of Assessment Review and/or Assessor of the Town of Goshen and the Town of Goshen, Orange County, New York; Index No. 2010-008145

INTRODUCED BY: Councilman Philip Canterino

SECONDED BY: Councilman George Lyons

DATED: May 12, 2011

At a meeting of the Town Board of the Town of Goshen, County of Orange, State of New York, held at Town Hall in said Town on the 12th day of May, 2011;

WHEREAS, Minolta Advanced Tech has previously filed a tax certiorari proceeding against the Town of Goshen with respect to real property owned by the petitioner and known on the tax maps of the Village of Goshen as Section 122 Block 1 Lot 9; and

WHEREAS, it appears from the recommendation of the Town Assessor, the Town's Appraiser, and Dennis P. Caplicki, Esq., Counsel for the Town of Goshen in the aforesaid proceeding, upon a thorough investigation of the claims that further proceedings and litigation with the Town would involve considerable expense with the attendant uncertainty of the outcome and that the settlement of the above matter as more fully set forth in the annexed proposed Consent Judgment/Stipulation of Settlement is reasonable and in the best interest of the Town; and

WHEREAS, petitioner, Minolta Advanced Tech, is willing to settle these proceedings without interest, cost or disbursement, in the manner as set forth in the annexed Consent Judgment/Stipulation of Settlement.

NOW, THEREFORE, BE IT RESOLVED, that the proposed settlement as set forth and described above is hereby accepted pursuant to Section 68 of the Town Law; and it is further

RESOLVED, that JoAnn Soules, Assessor of the Town of Goshen, and Dennis P. Caplicki, Esq., be and they hereby are designated as the Officers of the Town who shall apply before such approval pursuant to the aforesaid section and law and authorized to sign or execute any and all documents necessary to effectuate this resolution.

Upon Roll Call Vote:

Supervisor, Douglas Bloomfield	<u>AYE</u>	Councilperson, Philip Canterino	<u>AYE</u>
Councilperson, Louis Cappella	<u>ABSENT</u>	Councilperson, Kenneth Newbold	<u>AYE</u>
Councilperson, George Lyons	<u>AYE</u>		

Vote: Resolution carried by a vote of 4 to 0

3. REVIEW AND APPROVE A RESOLUTION TO SETTLE A TAX CERTIORARI WITH GAM PROPERTIES

**TOWN OF GOSHEN
RESOLUTION**

Settling of Tax Certiorari Claim

INTRODUCED BY: Councilman George Lyons

SECONDED BY: Councilman Philip Canterino

DATED: May 12, 2011

At a meeting of the Town Board of the Town of Goshen, County of Orange, State of New York, held at Town Hall in said Town on the 12th day of May, 2011;

WHEREAS, GAM Property Corp. has commenced tax certiorari proceedings against the Town of Goshen in the Supreme Court of the State of New York, County of Orange for the 2009-2010 tax assessment years bearing Orange County Index #'s 2009-8273; 2009-8274; and

WHEREAS, it appears from the recommendation of the Town Assessor, the Town's Appraiser, and Dennis P. Caplicki, Esq., Counsel for the Town of Goshen in the aforesaid proceeding, subsequent to a thorough investigation of the claims and that further proceedings and litigation with the Town would involve considerable expense with the attendant uncertainty of the outcome and that the settlement of the above matter as more fully set forth in the annexed proposed Stipulation and Agreement is reasonable and in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED, that the proposed settlement as set forth and described in the annexed Stipulation and Agreement is hereby accepted; and it is further

RESOLVED, that JoAnn Soules, Assessor of the Town of Goshen, and Dennis P. Caplicki, Esq., Attorney for the Town of Goshen, be and they hereby are authorized to sign or execute any and all documents necessary to effectuate this resolution.

Upon Roll Call Vote:

Supervisor, Douglas Bloomfield	<u>AYE</u>	Councilperson, Philip Canterino	<u>AYE</u>
Councilperson, Louis Cappella	<u>ABSENT</u>	Councilperson, Kenneth Newbold	<u>AYE</u>
Councilperson, George Lyons	<u>AYE</u>		

Vote: Resolution carried by a vote of 4 to 0.

4. REVIEW AND APPROVE A RESOLUTION TO SETTLE A TAX CERTIORARI WITH BENCHMARK, INC.

Attorney Caplicki is removing this from the agenda, for the settlement hasn't been completed.

5. REVIEW AND APPROVE HIRING DAVID LEVITUS AS PART-TIME DATA COLLECTOR FOR THE PERIOD OF MAY 16, 2011 THRU APRIL 30, 2012 AT A RATE OF \$17.00 PER HOUR, DAVID WILL PROVIDE HIS PERSONAL CAR AND FUEL AT HIS EXPENSE AS PART OF THE JOB ASSIGNMENT.

David Levitus presently works for the Town of Ramapo. The Assessor has recommended him for this position being as he is qualified for this position. The County Department of Real Property will also provide an employee to assist him. This is being worked out by the Assessor.

Councilman Newbold made the motion to hire David Levitus as a part-time Data Collector for the period of May 16, 2011 thru April 30, 2011 at a rate of \$17.00 per hour. David will provide his personal car and fuel at his expense as part of the job assignment. Councilman Lyons seconded the motion.

Discussion:

Councilman Lyons questioned the time span for his employment. Will this bind us if he doesn't work out? Will there be a probation period? Is he going to get a 1099 at the end of the year?

Response: He will be a part-time employee, not a contractor. Since Mr. Levitus will be a part-time employee, the ending date of employment is stricken from the motion. It is approved for him to use his personal car and fuel. The ending date will be stricken from the motion. Also, Mr. Levitus will have to undergo a police background check. A civil service part-time clerk position will be open for hire before July 1, to assist in the office when the current employees are doing field work for the revaluation.

Councilman Newbold made the motion to hire David Levitus as a part-time Data Collector to start on May 16, 2011 at a rate of \$17.00 per hour. David will provide his personal car and fuel at his expense as part of the job assignment. Councilman Lyons seconded the motion.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

6. DISCUSS AND APPROVE REQUEST BY SUSAN CLEAVER TO PURCHASE ENVIRONMENT MONITORING EQUIPMENT FOR THE BUILDING/ZONING OFFICE AT A COST NOT TO EXCEED \$529.00. THE EQUIPMENT WILL BE USED TO MONITOR WATER TEMPERATURE OF THE OTTERKILL AND BLACK MEADOW CREEK.

We are looking to purchase: 3 temperature Data loggers at a cost of \$105.00 each, 1 communication optic base at a cost of \$115.00 and 1 software package at a cost of \$99.00. The Otterkill/Black Meadow watershed is listed as 'threatened', based on elevated temperature issues. The Environmental review Board along with the Hudson River Estuary program are trying to track down sources and discharges that may be attributing to the problem.

Councilman Newbold made the motion to authorize the purchase of environment monitoring equipment for the Building and Zoning Office, not to exceed \$529.00 to be used to monitor water temperatures of the Otterkill and Black Meadow Creek. Councilman Lyons seconded the motion.

Discussion:

Councilman Newbold inquired as to who will be responsible for actually monitoring the temperature?

Response: Susan Cleaver, representing the ERB. What will be done with the findings? Response: The temperature changes will be tracked and sent to the DEC.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

7. AS INFORMATION – THERE IS ANOTHER REQUEST FOR AN OUTSIDE MUSIC EVENT TO BE HELD ON 8/20/2011 ON THE ANDREW FIELD PROPERTY ON ROUTE 17A

Giles Haysom from Warwick, NY is the applicant wishing to hold an outdoor music festival in August. The property is located on Rt. 17A between Durland Rd. and Commercial Dr. on the Andrew Field Property. More details pertaining to this event will be discussed at a future meeting.

G. FINANCE:

Councilman Newbold made the motion to authorize the Supervisor to pay Manual A/P runs of 03/29/2011 amounting to \$857.12 and Manual A/P runs of 04/27/2011 and 05/03/2011 amounting to \$101,221.06. Councilman Canterino seconded the motion.

On a Voice Vote, the motion passed: 4 AYES Bloomfield, Canterino, Lyons, Newbold
0 NAYS

H. PRIVILEGE OF THE FLOOR:

Jerry Boss, How is NY Farms going to hook-up to the existing sewer lines? He complimented the Board Members as to the way in which they conduct an open meeting, allowing the public to speak freely without timing the individual.

Response: Attend the meeting on the 18th and this will be explained by the Engineer.

A few months ago, a Local Law was proposed. The public objected to the law. The Board acknowledged this and didn't pass the law.

Neil Hickok, requested clarification on a topic that was discussed at a previous meeting pertaining to monies received for the Police Dept. from the sale of a vehicle confiscated during a drug bust.

Councilman Canterino updated the Board that as of today all of the NYS mandated training has been completed in the Police Dept.

Joel Markowitz questioned the tax certiorari settlements-inaudible.

I. EXECUTIVE SESSION

Councilman Newbold made the motion to enter into Executive Session to discuss the following,

1. Discuss Current Status Of Village/Town Sewer Dispute Arbitration
2. Review Letter From Village Regarding MTBE'S
3. Discuss Potential Litigation Regarding Alleged Injury At Craigville Park
4. FBI Training

with the intent not to return. The motion was seconded by Councilman Lyons. Motion carried.

J. ADJOURNMENT

The public meeting concluded at 9:25PM

Priscilla Gersbeck, Deputy Town Clerk