

MINUTES OF THE SEPTEMBER 6, 2012 MEETING OF THE TOWN BOARD OF THE TOWN OF POUND RIDGE AND PUBLIC HEARING HELD AT THE TOWN HOUSE, 179 WESTCHESTER AVENUE, POUND RIDGE, N.Y. COMMENCING AT 8:00 P.M.

PRESENT: SUPERVISOR GARY WARSHAUER; COUNCIL MEMBERS: RICHARD LYMAN, DANIEL PASCHKES AND ALISON BOAK

ALSO PRESENT: DEPUTY SUPERVISOR JONATHAN POWERS
TOWN CLERK, JOANNE PACE
TOWN ATTORNEY, JAMES J. SULLIVAN, ESQ.

ABSENT: COUNCILMAN PETER FALCO

CALL TO ORDER: Supervisor Warshauer called the meeting to order at 8:00 p.m.

ANNOUNCEMENTS:

- **9/11 Memorial Day at Sachs Park, 10 am on September 11, 2012**
- **Supervisor's Forum-September 15th at 10 am-Discussion of New York State issues with State Senator Ball and State Assemblyman Castelli**
- **Town Board Work Session moved from September 26th to September 19th**

MINUTES: Acknowledge/correct/accept minutes of Town Board and Executive Session Meeting on August 2, 2012 and minutes of the Work Session of August 22, 2012.

Board Action: Motion by Councilman Lyman, seconded by Councilman Paschkes, all voting aye to acknowledge minutes of Town Board and Executive Session Meeting on August 2, 2012 and minutes of the Work Session of August 22, 2012.

PUBLIC HEARING:

- **To consider amending the Tree Ordinance**

Board Action: Motion by Councilwoman Boak, seconded by Councilman Lyman, all voting aye to open the Public Hearing to consider amending the Tree Ordinance.

The Town Board and the Conservation Board have been discussing the proposed tree ordinance referring to removal of trees on subdividable acreage. This was to prevent clearing of land prior to a subdivision. The section of the ordinance that is primarily being addressed is §93-4. Tree Removal Permit. Alan Melting, Conservation Board member, explained the highlights suggested by the Conservation Board.

Highlights of the Tree Code

The purpose of the Tree Code is to preserve the historic character and the present environment of Pound Ridge by protecting the tree cover from indiscriminate destruction. The Code requires a permit for the removal of *certain size* trees on *certain areas* of a homeowner's property. A permit

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is also required for the removal of *certain species* of trees, and there is a blanket prohibition against clear cutting of any kind without a permit.

The Code requires a homeowner to obtain a permit from the Building Department if considering the removal of a tree or trees as follows:

TREES 6 INCHES IN DIAMETER OR LARGER:

1. within 25 feet of the property line
2. slopes greater than 15 percent
3. in designated wetland setbacks

TREES 12 INCHES IN DIAMETER OR LARGER:

- I. if they are anywhere on a property that can be subdivided

TREES 24 INCHES IN DIAMETER OR LARGER:

1. are designated "specimen trees" because of their size, anywhere on the property

PROTECTED TREES: There is a list of 12 endangered, rare, or threatened trees in the Code's Appendix. A permit is required to remove them regardless of size or location on the property.

INVASIVE TREE SPECIES: There is a list of 8 invasive trees in the Code's Appendix. Such trees *may* be removed with a permit regardless of size or location on the property, unless serving in the control of erosion, because they are non-native and quickly supplant all other tree species.

EXCEPTIONS TO THE CODE: A tree can be removed without a permit if it:

1. endangers utility lines
2. presents a dangerous condition
3. is a dead or dying tree

STANDARDS FOR GRANTING PERMITS:

1. tree in poor physical condition
2. proximity of tree to existing or proposed improvements
3. the effect on the ecology
4. proper tree management practices
5. effect on property values or aesthetics
6. effect on solar access

Several other Town Codes include restrictions on tree removal and are cross-referenced in the Tree Code.

Instructions are included in the Code for: a) applying for a permit; b) conditions for removal of a tree after a permit is granted; c) fees charged if any; d) penalties for the unauthorized removal of a tree (\$500 fine and replacement tree per tree removed); and e) the appeals process.

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Gail Jankus, Chair of Conservation Board, said the Town Board asked the Conservation Board to review the existing Tree Ordinance about a year ago and she thanked Alan Melting for all his work updating the ordinance. He has reviewed ordinances from surrounding communities and drafted the amended Tree Ordinance accordingly. He then sent it to Building Inspector Jim Perry to make sure it was workable. The amendments are very fair and continue to protect this community and its trees. The updated ordinance before the Town Board is no more restrictive than the one it is replacing. This ordinance does not prohibit property owners from cutting down trees. No permit is needed if the tree is dead or dying or creates a danger to personal property or interferes with utility lines.

Elyse Arnow, Fancher Road, spoke on a personal note about the process. The Conservation Board did a magnificent job with the limitations that were put on them for enforcement. She talked about the Greenwich Ordinance and gave copies to the Town Board to review. She doesn't see rules and regulations relating to utility companies and road way work addressed in our present ordinance. She feels there are other best practices out there that the Conservation Board could have looked at giving them a broader scope. She doesn't see this draft as a final product but a work in progress. She wants the Conservation Board to have a free range to look at other possibilities rather than giving them restrictions.

Richard Mendes, Peters Lane, said the summary prepared is something that the Building Inspector should hand out to the public to help them when preparing plans for construction.

Supervisor Warshauer said that he was not aware of any restrictions put on the Conservation Board when they started updating the Tree Ordinance. He wasn't quite sure what Elyse was addressing. Generally the Town Board lets the Conservation Board do the things that they deem is appropriate and the Town Board's responsibility is to package that into something that is balanced.

Councilman Paschkes has a concern relating to property owners rights with legitimate interest in caring for the environment. He feels that there should be a way to allow property owners to remove trees on a larger piece of property over an extended period of time without getting the building inspector involved. He would like to hold off adopting the amendments tonight. Councilwoman Boak stated that they should go ahead and vote tonight and that this is not the end all be all. The tree ordinance hasn't been amended in 22 years and if Councilman Paschkes would like to amend the language at another time, it can be done.

Board Action: Motion by Councilman Lyman, seconded by Councilwoman Boak, the Board polled and motion passing 3-1 with Councilman Lyman, aye, Councilwoman Boak, aye, Councilman Paschkes, nay, and Supervisor Warshauer, aye, to close the Public Hearing to consider amending the Tree Ordinance.

RESOLUTION #: 167-12

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Board Action: Motion by Councilman Lyman, seconded by Councilwoman Boak, the Board polled and motion passing 3-1 with Councilman Lyman, aye, Councilwoman Boak, aye, Councilman Paschkes, nay, and Supervisor Warshauer, aye, on the following:

RESOLVED, that the Town Board hereby adopts the amendments to the Tree Ordinance adopted a Local Law 1 of 1990 as presented by the Conservation Board. This will be recorded as Local Law 5 of 2012 and will take effect upon filing with the State of New York.

Councilman Paschkes explained that he does appreciate all the work that the Conservation Board put into this ordinance and agrees with significant portions of it and joins in their interest in protecting specimen trees, wetlands and slopes. He feels that the requirement or the failure to allow for minimal activity without governmental permitting is overreaching.

Supervisor Warshauer thanked the Conservation Board for all their work and efforts.

NEW BUSINESS:

- **State Senator Greg Ball-State of the State Address**

Senator Ball gave a synopsis of what was accomplished with one year under his reign. The most important accomplishment was cutting government spending. The deficit was originally \$14 billion met with increased taxes and fees and now there is a \$10 billion deficit without increased taxes and fees. Our Governor has displayed extraordinary leadership. Senator Ball briefly went over important bullets in his presentation that included the following:

- **Property Tax Cap** bill included mandate relief for local schools and governments and created the framework for doing away with unfunded mandates.
- **Taxes**-delivering the middle class taxpayers the lowest tax rate in 58 years.
- **MTA Tax** repeal-eliminating the MTA tax completely for 80% of businesses paying those taxes.
- **Pension Reform**-new public employee pension Tier VI was introduced and the retirement age was revised from 62 to 63.
- **Job Creation** – “NY Works” program rebuild state roads, highways and bridges.
- **Seniors**- restored \$30.6 million to elderly pharmaceutical insurance coverage (EPIC). Increased STAR rebate for seniors.
- **Education**
- **Women & Families**
- **Veterans**
- **Environment**

Senator Ball is also calling for Passage of Property owner’s Bill of Rights to protect New York from potentially devastating effects of hydrofracking. It is an industrial process to unlock natural gas and every time they frack a well, there is 8 to 10 million gallons of industrial waste. Ninety

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percent of that industrial waste stays under the surface and eventually some water might be contaminated.

- **Animal Rights** – he spoke about the inhumane puppy mills and how he is trying to put restrictions on them.

Discussion followed with the audience and the Town Board members. Supervisor Warshauer thanked Senator Greg Ball for coming and reminded everyone that there will be a Supervisor's Forum on Saturday, September 15th at 10:00 a.m. with Senator Ball and Assemblyman Bob Castelli for further discussion.

- **Auditors -2011 financial reports**

Susan Barosi and Marc Traina of O'Connor Davies, LLP explained that the financial statements are the responsibility of the Town's management. Ms. Barosi said that the Town has five funds: General Fund, Highway Fund, Capitol Fund, Parking Fund and Special Purpose Fund or Trust and Agency Fund. Tonight they focused on the General Fund which is the operational fund. The auditor's express no opinions on these basic financial statements based on the audit. They briefly went through stating that the financials contain reasonable estimates, no significant audit adjustments, no disagreements and no major accounting, auditing or reporting issues. The financial statements present fairly the respective financial position of the governmental activities with accounting principles generally accepted in the United States of America.

Marc Traina summarized the General Fund Comparative Schedule of Revenues and Expenditures. At the end of the current year, unreserved fund balance for the General Fund was \$1,026,266, which equates to 20.9% of total General Fund expenditures of \$4,910,761. As of the close of 2011, the Town's governmental funds reported combined ending fund balances of \$3,020,200, a decrease of \$314,128 from FY2010. This resulted from reducing short-term debt. The General Fund reported an ending total fund balance of \$3,109,268 which represents an increase of \$698,158 from FY2010 ending fund balance of \$2,411,110. At the end of the current fiscal year, the Town had outstanding \$645,000 of bond anticipation notes. This represents a decrease of \$365,000 from the FY2010. The Town has been consistent with keeping within the budget each year.

Marc Traina went through the comparative schedule of revenues, expenditures and changes in fund balance for the General Fund. Total revenues were budgeted as \$4,696,536 and the actual came in as \$4,532,620 with a difference of \$163,916. The total expenditures were budgeted at \$4,981,104 and the actual expenditures were \$4,910,761 with a positive variance of \$70,343. With other financing sources, the auditors dissolved the Capital Fund reserve for Open Space and put it into the General Fund as a transfer in of \$1,523,481. This increased the fund balance but the \$1,523,481 was restricted or assigned.

They prepared a Management Letter which discusses the strength and weaknesses in the internal control and suggestions for any operating deficiencies. At the end of the audit process, the Town

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of Pound Ridge received an unqualified opinion which is the best opinion that any municipality can get. The majority of the five funds is included in the General Fund and is available for spending at the Town's discretion. Susan Barosi briefly went through the Summary of Communications of Internal Control Matters and there were no material errors, frauds or illegal acts or weakness identified. All accounting policies appeared appropriate. There was nothing to report.

Supervisor Warshauer thanked Steve Conti, Director of Finance, along with O'Connor Davies, LLP for all their work for helping keeping Pound Ridge financially secure. The Financial Statements are available in the Town Clerk's office.

RESOLUTION #: 168-12

Board Action: Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby accepts the 2011 Financial reports as presented by the Town auditors O'Connor Davies, LLP.

Inn at Pound Ridge-Special Use Permit Application

Lucia Chiochio, Cuddy & Feder, LLP, is representing the owners of KKPR, LLC in connection with its Special Use Permit to operate a restaurant at 258 Westchester Avenue, Pound Ridge, NY, formerly The Inn at Pound Ridge. The design team has developed the final detailed plans for the restaurant to comply with all of the conditions set forth in the Special Use Permit approval granted by the Town Board. They have obtained approval from Landmarks and Historic District Commission and from the Westchester County Department of Health for the replacement of the existing above ground septic system with a new underground septic tank and system. They also put in a back up generator in the basement of the barn structure.

Final drawings were presented to the Town Board with the landscaping and architectural enhancements to the building by Thomas Darmawan of Brooks & Falotico and Robert Aiello, PE of JMC Consulting, PC. The design team anticipates submission of the required Building Permit application materials in October. They would like to open in the fall of 2013.

RESOLUTION #: 169-12

Board Action: Motion by Councilwoman Boak, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby refers the Special Use Permit application to the Planning Board for their review and recommendations.

- **Consider Referendum to Temporarily Suspend Funding Open Space**

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The Town Board is considering putting a referendum to repeal the Open Space tax for a period of time on the ballot in the November 6, 2012 election. The tax voted on in 2010 had a phase-in schedule that required \$.50 per thousand dollars of the assessed valuation in 2011, \$.75 per thousand dollars of the assessed valuation in 2012 and \$1.00 per thousand dollars of the assessed valuation in 2013. The Town Board is asking for the residents to approve another phase-in schedule starting at zero (0) in 2013 instead of the \$1.00 if it went unchanged. The following is the language proposed for the proposition:

Shall the Town of Pound Ridge amend the financing schedule and term of the Open Space fund, adopted by town wide referendum on November 2, 2010. The fund, scheduled for full funding of \$1.00/\$1,000 of assessed value from 2013 through 2020, is proposed to be modified as follows: suspended for 2013; \$.25/\$1,000 of assessed value in 2014; \$.50/\$1,000 of assessed value in 2015; \$.75/\$1,000 of assessed value in 2016 and \$1.00/\$1,000 of assessed value from 2017 through 2024.

The concerns are the budget spikes that include medical insurance and our pension plan. This would be a financial decision. Supervisor Warshauer contacted Tom Anderson, Chair of the Open Space Acquisition Committee, Elyse Arnow of the Land Conservancy and Conservation Board Chair Gail Jankus for their opinions. The concern was that the Open Space tax would be forgotten, but that is not the intention. It will be deferred for 2013 and phased in after that ending with \$1.00/\$1,000 of assessed value from 2017-2023, as corrected by Tom Anderson of the Open Space Acquisition Committee.

Barry Cohen, Joshua Hobby Lane, feels that the Town should put it on hold or eliminate it altogether and put that money towards the business district's septic system or some other infrastructure project. He feels that would be better use of the funds.

RESOLUTION #: 170-12

Board Action: Motion by Councilman Paschkes, seconded by Councilman Lyman, the Board polled and motion passing 4-0 on the following:

RESOLVED, that the Town Board hereby accepts the language for the ballot as written with the amendment of changing the date of the end of the phase in with \$1.00/\$1,000 per assessed value from 2017-2023 instead of 2024 to make the fund revenue neutral.

Councilwoman Boak qualified her vote by saying that the Town Board really didn't have enough time to study any alternatives to the proposition or options. She is concerned about sending a message that Open Space is not important. Because of the timing, the vote needed to be taken tonight on the proposition for the General Election and she would err on the side of letting the residents decide on November 6, 2012.

- **Pound Ridge Golf Club-consider request to revise frequency of groundwater sampling, including authorization of 3rd party monitoring audit**

This will be discussed at the October 4th Town Board meeting because the counsel for the applicant was unavailable and the Town Board would like the auditor's report before determining

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to amend the monitoring schedule. Councilwoman Boak also asked that the communication plan be addressed in the audit. The neighbors should be updated with the audit results and the monitoring schedule.

- **Town Clerk- request permission to advertise the bidding of the 2012-2013 Fuel Oil and Service Contracts**

RESOLUTION #: 171-12

Board Action: Motion by Councilman Lyman, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the Town Clerk to go to bid for the 2012-2013 Fuel Oil and Service Contract.

-Sale of Cemetery Plots

RESOLUTION #: 172-12

Board Action: Motion by Councilwoman Boak, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Supervisor be and is hereby authorized to sell Town Cemetery Plot #156,157 and 158, Section 3 (6 gravesites) to Andrea Constantino Neri in the amount of \$6,000, AND, BE IT

FURTHER RESOLVED, that the Supervisor be and is hereby authorized to sell Town Cemetery Plot # 428, Section 3 (2 gravesites) to Kenneth DeRoberts, 10 Knapp Road, Pound Ridge, NY 10576, AND, BE IT

FURTHER RESOLVED, that the Supervisor be and is hereby authorized to sell Town Cemetery Plot # 99, Section 3 (2 gravesites) to Dean C. Rohrer, 37 Woodland Road, Pound Ridge, NY 10576.

- **Assessor – requesting authorization for Michele Jordan to attend Certification Seminar**

Michele Jordan, Assistant to the Assessor, is requesting authorization to attend the NYS Institute of Assessing Officers basic course for assessors entitled “Commercial and Industrial Appraisal” in East Syracuse, NY, September 17-20, 2012. Expenses for lodging, meals, tuition and gas are not to exceed \$1160.

RESOLUTION #: 173 -12

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Board Action: Motion by Councilwoman Boak, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes Michele Jordan to attend the NYS Institute of Assessing Officers basic course for assessors entitled “Commercial and Industrial Appraisal” in East Syracuse, NY, September 17-20, 2012. Expenses for lodging, meals, tuition and gas are not to exceed \$1160.

- **Amendment to Retirement Resolution**

The Town Board passed a resolution in May 2012 establishing a standard work day for elected and appointed officials reporting actual days worked. An amendment to the resolution is needed to eliminate the days worked from employees in the time keeping system and actual days need to be reported instead of the limited 20 days reported on the retirement payroll reports. Attached is the amended resolution with the days reported based on actual records of activities.

RESOLUTION # 174 -12

Board Action: Motion by Councilwoman Boak, seconded by Councilman Lyman, all voting aye on the following:

BE IT RESOLVED, that the Town of Pound Ridge /Location code 30004 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 time keeping system records or the record of activities maintained and submitted by these officials to the clerk of this body. (attached is the resolution sent to the NYS Retirement with the days recorded).

FINANCIAL MATTERS

Recreation Department – requests authorization for refund deposit on cancellations

RESOLUTION #: 175 -12

Board Action: Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the following refunds:

| | | |
|--|---------------------|---|
| Albert Dalisa 259 Trinity Pass Pound Ridge, NY 10576 | \$50.00 from A2025 | Due to cancellation of child's group swim lesson program |
| Jill Altneu | \$110.00 from A2001 | Withdrawal of child from |

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17 Kelly Circle
Katonah, NY 10536

flag football program

Scott Travis \$190.00 from A2001
10 Shad Rd. West
Pound Ridge, NY 10576

Duplicate registration of 2 children
for flag football program

Peter Bye \$95.00 from A2001
10 Deepwood Rd.
Bedford, NY 10506

Duplicate registration of child for flag
football program

Tax Receiver – requests authorization to refund 2012 Tax Certiorari

RESOLUTION #: 176 -12

Board Action: Motion by Councilwoman Boak, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the following payment of court ordered reduction in the Town Tax:

| <u>Name</u> | <u>Parcel ID</u> | <u>Assessment</u> | <u>Reduced to</u> | <u>Tax Year</u> |
|-------------|------------------|-------------------|-------------------|-----------------|
| Leidel | 9817-21 | \$199,000.00 | \$187,500.00 | 2011 |

Water Control Commission – requesting to release a bond

RESOLUTION #: 177-12

Board Action: Motion by Councilman Paschkes, seconded by Councilwoman Boak, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the following Water Control Commission Bond Release as all work has been satisfactorily completed:

Elizabeth Miller, 65 Lower Shad Road, Block 9318 Lot 19.9, \$1,000 bond for mulched pathways (#09-03).

Highway Department – sale of old truck

RESOLUTION #: 178-12

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Board Action: Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the sale of the maintenance department's old truck and the old fiberglass tank to Auctions International for \$3,103 for the truck and \$307 for the tank per memo of 9/6/12.

Councilwoman Boak gave a memo to the Town Board on behalf of the Mid-Hudson Sustainability Planning Team regarding a pre-grant application for a green street lighting project. Councilwoman Boak would recuse herself because she would be applying with the Pound Ridge Partnership and it would be a conflict of interest being she is part of the Town Board and the Partnership. Counsel Sullivan said the Town Board couldn't get involved with this because the Town Board is acting as Parking District Commissioners and have an advocate (Councilwoman Boak) for a non-related entity. By the Councilwoman bringing something to the Board that is the advocacy for which she is prohibited from doing as a council member of the Town Board. Councilwoman Boak will have the Pound Ridge Partnership pursue this without going through her. The Town took no action because the Partnership has nothing to do with the Town.

Monthly Reports

Pay Bills

RESOLUTION #: 179 -12

Board Action: Motion by Councilman Lyman, seconded by Councilman Paschkes, Board polled, motion passing 3-0 with Councilwoman Boak abstaining, to authorize payment of bills:

WHEREAS, Councilwoman Boak has audited claims for payment and has reported that same could be paid, Now, Therefore, Be It

RESOLVED, that the Supervisor be and is hereby authorized to pay the following claims for payment provided there are sufficient funds in the account to which a claim may be charged:

| | | | |
|-------------------------|-----------|--|----------------------|
| GENERAL FUND | G | | \$ 177,019.04 |
| HIGHWAY FUND | D | | \$ 138,512.24 |
| PARKING DISTRICT | ST | | \$ 1,606.13 |
| TRUST AND AGENCY | T | | \$ 89,937.29 |
| CAPITAL | H | | \$ 3,145.97 |

ADJOURNMENT: There being no further business to come before the Board, Supervisor Warshauer adjourned the regular meeting at 11:40 p.m.

Joanne Pace
Dated at Pound Ridge, New York
September 10, 2012

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TOWN OF POUND RIDGE
POUND RIDGE, N.Y.
September 10, 2009