

TOWN OF NORTHUMBERLAND
November 5, 2008
Town Board Meeting

The Regular Monthly Meeting of the Northumberland Town Board was called to order @ 8:10 PM by Supervisor Willard Peck. Following the salute to the flag, roll call was taken. Those attending included Supervisor Willard Peck, Councilman Paul Bolesh, Councilman Daniel Gale, Councilman George Hodgson and Councilwoman Patricia Bryant (arrived @ 8:35 PM). Also attending were Clerk Denise Murphy, Highway Sup't Neil Petteys, Town Attorney Douglas Ward and Building/Zoning Administrator Richard Colozza.

PUBLIC PARTICIPATION

James McCarthy, Brampton Lane, stated he had an incident with his daughter that required an ambulance, which took over ½ hour to arrive from Moreau. Mr. McCarthy stated this is frustrating when Wilton Ambulance is around the corner. Supervisor Peck explained the town has a contract with Moreau Emergency Squad. Mr. McCarthy stated that Moreau Emergency Squad could not find Brampton Lane. Mr. McCarthy tried a goggle search of Brampton Lane, and it did not show up. Building and Zoning Administrator, Richard Colozza stated that Verizon (911) has your address in the system or you would not have cable TV, but he will verify it with Saratoga County Emergency Services.

Bob Gerber, Brampton Lane stated he contracted with C & S Construction, Chuck Waldron, in 2006 – 2007 to build his home like most of his neighbors here tonight. This July 1 ½ years after his home was built, his septic system failed. The Contractor came and looked at my septic system and stated the system was installed correctly and was not his problem. The Gerber's have had to hire a third party engineer to come out and tell us what actually happened. The results of the engineer's examination found no less than 6 violations of New York State Public Health Law and no less than 3 violations of the Subdivision Approval signed by this town in 2006. C& S Construction maintains the reason my septic system failed was because we converted our bonus room to living quarters. Mr. Gerber stated that he has reached out to some of the officials of the Town for help. Instead of receiving help from the Town, each neighbor received a letter from the Town telling us our bonus rooms could not be used for living space; it was intended for cold storage. These bonus rooms have heat, electricity, ceiling lights, sheetrock and depending on what residents ask for at the time they purchased their home in Brampton Woods. Since then there has been multiple correspondence between myself and the town and some how every piece of correspondence has ended up in the hands of Chuck Waldron. Town Attorney Douglas Ward explained to the Gerber's the "Freedom of Information Law" (FOIL). As of October 6, 2008 we were given 30 days to bring our septic system into compliance or the Town will withdraw our "Certificate of Occupancy" (CO). We the homeowners are being required to bring our failed system into compliance.

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We are being held responsible for something clearly in violation of the NYS Building Codes. The homeowner is expected to take \$10,000 out our pocket to fix a failed septic system. Since I received my violation letter, another system has failed less than 2 years old. Mr. Gerber stated his home was spec'd as a 3 bedroom home with a bonus room. All discussion with the Builder was that the bonus room was going to be converted to livable space at some point. Mr. Gerber stated that by New York State Public Health, bonus rooms should have been spec'd as a bedroom and a septic system should have been designed accordingly. Based on this all the homes should have had installed a 1,200 gallon tank and additional lines. I'm not sure what I specifically need to do. I only have roughly 20 days until my CO is withdrawn. Supervisor Peck stated he has talked with both Mr. Gerber and Mr. Waldron over the failed system. Supervisor Peck had the town engineer look at the Building Plans and to be present at the deep hole test done at the Gerber parcel. The Town Attorney is involved. One of the issues is the bonus room being converted to a bedroom, was brought to our attention by Mr. Waldron. Once the town is put on Notice, the town needs to send out a "Notice of Violation". Seasonal high water table was discussed in relationship to septic tank installation. Supervisor Peck stated the real problem is winter is just around the corner, you do not want a failed septic system in the winter. Mrs. Gerber stated they can not expend any more unauthorized funds per our Warranty; we are in a catch 22. Mr. Gerber explained the Home Warranty which was part of the Real Estate Contract. This prevents the homeowner from suing or getting lawyers involved. This forces us to go through the Arbitration process, which will be binding. We cannot accrue any additional costs; we must give the Developer the opportunity to fix it. This matter has been going on for five months. The New York State Department of Health (NYS DOH) told the Gerber's this should be handled at the town level. Mrs. Gerber asked for a time extension on their violation to fix their failed system. The Gerber's stated they have asked that this goes to Arbitration, but that could take up to 40 – 60 days before it is heard. Attorney Douglas Ward stated there is no easy solution to this problem. The Town has a similar problem in another Subdivision and the New York State Department of Health has backed the Town up, the Town as been in litigation for over 6 years. Town Attorney Douglas Ward stated since you are taking steps to move this process forward, to a solution, I'm very open to negotiating and extension of the 30 day time limit. I'm very concerned though that these systems are still open. Mr. Gerber asked what happens in January when my neighbors sitting here tonight Warranty's expire. There have been two failures right next to each other within 1 ½ years of being built. Mrs. Gerber stated all she wants is her system fixed.

Scott Turner, Brampton Lane, stated he purchased his home from Waldron Builders (Mike Waldron) and moved into his home in August 2008. I'm already having septic issues. My house was a 3 bedroom with a bonus room that was ready to be used as living space the day I moved in. My Engineer report indicates Lot 10 is a 4 bedroom house.

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The "CO" I was provided by Waldron Builders indicates this is a 3 bedroom house with a bonus room. Supervisor Peck stated that unfortunately the Town cannot fix everyone's problems. Mr. Gerber stated all he was asking the Town and Building Inspector to do is follow NYS Health Laws and Building Codes. Do not come down on the homeowner and squash us when the builder is at fault. Mr. Gerber stated that he built a deck and put in an above ground pool. I did not know I needed a Building Permit. I hung sheetrock and I'm again in violation. How is a homeowner to know when and when not a Building Permit is required?

Mr. & Mrs. McCarthy, Brampton Lane, asked how someone is supposed to know they need to obtain a Building Permit to finish off a bonus room. We lived in Terrel Hills for years before buying our home in Brampton Lane, most of my neighbors converted rooms into bedrooms. Mrs. McCarthy said now she finds out they are in violation. Mr. McCarthy asked what the definition of "Cold Storage" is.

Councilman George Hodgson stated there is obviously a problem in Brampton Woods. In my mind, I need to identify what is causing these problems. These septic systems should not be failing. Is it the size of the tanks, is it the leach lines, or is it the infiltration systems themselves. I'd like to get NYS DOH input. I think we need Health Department professionals; they are the ones that approved these systems. We need to know the cause of the problem before we can correct it. I would like Town of Northumberland to request NYS DOH involvement in assessing the situation.

Stephan Rajeski, Brampton Lane, stated his system has also failed. The maker of the infiltration system will be visiting his home to see if there is a product failure.

James Heber, Brownville Road, stated he has visited the Rajeski site in Brampton Woods and infiltration systems in that type of soil do not work. The Town Board should put a Moratorium in place on using infiltrators in our town until this is resolved. Attorney Douglas Ward stated the infiltrator system has NYS DOH approval.

Building/Zoning Administrator Richard Colozza stated he has his own septic system report form he uses for his notes. The Developers Engineer George Yasenchak, Engineering American Co, certifies the septic systems. Mrs. Gerber stated she has contacted the Attorney General's office hoping to get some direction on how best to solve this matter.

Supervisor Peck informed the Board that Mr. Freemire, San Luis Road, was here earlier tonight and asked that the Town Board consider adopting a Local Law banning back yard burning within 100 ft of a neighbor. Supervisor Peck stated the biggest problem is enforcement.

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APPROVE MINUTES

1. Councilman George Hodgson made a motion to approve minutes of the October 2, 2008 Regular Monthly Meeting. Councilman Daniel Gale seconded the motion. All in favor, motion carried.

APPOINTMENTS

1. Supervisor Willard Peck informed the public that there are two openings on the Planning Board. James Heber (originally appointed in 1987) and Brit Basinger (originally appointed in 2005) have both asked to be reappointed to a seven year term. Julie Trollip, West River Road, Lisa Black, Homestead Road, and Paulette Foote, all have requested to be appointed to the Planning Board. Supervisor Willard Peck made a motion to extend James Heber and Brit Basinger's term on the Planning Board for 30 days and to set up interviews for Julie Trollip, Lisa Black and Paulette Foote on December 4, 2009 starting @ 7:00 PM. Councilman Daniel Gale seconded the motion. All in favor, motion carried.

2. Supervisor Willard Peck made a motion to reappoint Gordon Strong (term will expire 09/30/2015) to the Zoning Board of Appeals. Councilman George Hodgson seconded the motion. All in favor, motion carried.

CORRESPONDENCE

1. The Town received a letter from New York State Department of Environmental Conservation regarding a Mining Permit renewal for James H Maloy on the Well's property. The Town Board requested that the Town Clerk forward this letter to the Planning Board for their review.

2. The Town received a Thank You card from Jeanne Daley for the Town Board's support of the Farmers Market.

3. The Town received a letter from Saratoga County Veteran's Service. July 2009 The County Board of Supervisor's will be honoring a deceased veteran from the Town of Northumberland.

OLD BUSINESS

1. Schuyler Park Update – Councilman Daniel Gale reported the clearing and grubbing of the site is complete. The process has started to rough grade the property. Dale

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Swartwout is donating the equipment and all the two towns need to do is pay for the fuel and discounted man hours. The estimated cost is between \$60,000 - \$70,000 which will be broken down between the Town of Saratoga and the Town of Northumberland. This would normally be a \$200,000 job. So far the costs have been for the Master Plan, clearing and Archeological Report which are roughly \$46,000 all together. The Town of Saratoga has completed SEQR in reference to the Final Master Plan for the development of Schuyler Park. The Town of Saratoga will be Lead Agency. There has been a full environmental Assessment Form for the project. The Action appears to be a Type I Action. The Town of Saratoga has prepared a Negative Declaration with respect to the action. Councilman Daniel Gale stated all the stone has been donated for the driveways and parking areas. Trail work will be done by BOCES and Instructor Dennis Flynn. Fort Miller has donated septic and stone materials for the bathroom and concession stand. Friends of Schuyler Park received their Not for Profit 503.C.3 status. An anonymous donor has given Friends of Schuyler Park a check for \$25,000. Because the soils at the site are sand, so the fields will need to have an irrigation system. Galusha is donating the sprinkler system.

2. Hudson Crossing update: Councilman George Hodgson stated he had a Pre-construction Meeting with NYS Department of Transportation (NYS DOT) and Mid-State Industries. Everything is set to go. Landscaper, Dick Thayer is donating his services at Eagle Point, the north end of the Island. The other good news is the Dix Bridge Grant request is ranked #2 with NYS DOT and is now in the second round of review. Councilman George Hodgson introduced Resolution #39 of 2008 – **A Request for Greenway Trail Designation of the Hudson Crossing Park Trails by the Town of Northumberland.**

WHEREAS, Article 44 of the Environmental Conservation Law (ECL) directs the Greenway Conservancy for the Hudson River Valley, Inc to designate a Hudson River Greenway Trail, and

WHEREAS, the Town of Northumberland holds a Use Permit for community trails within Hudson Crossing Park which enhancing the opportunity for the public to appreciate and support the preservation of the historic, scenic, cultural, recreational and natural resources along the Hudson River Greenway Trail, and

WHEREAS, the Town of Northumberland requests that 2.31 miles of the Hudson Crossing Park trails be designated as a riverside connector trail to be part of the Hudson River Greenway Trail System,

NOW THEREFORE BE IT RESOLVED, the Town of Northumberland Town Board requests the designation and inclusion of the Hudson Crossing Park Trails (including the

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Island Loop Trail and River Walk Trail) as part of the Hudson River Greenway Trail Systems.

Councilman Daniel Gale seconded the introduction of Resolution #39 of 2008.

Supervisor Willard Peck – “Aye”
Councilman Paul Bolesh – “Aye”
Councilman Daniel Gale – “Aye”
Councilman George Hodgson – “Aye”
Councilwoman Patricia Bryant – “Aye” Resolution #39 of 2008 – Adopted

Councilman George Hodgson stated last month he presented a Resolution in support of a revision to NYS Canal Corporation regulations to allow the Canal Corporation to issue Land Use Permits to NYS Snowmobile Clubs for the purpose of maintaining snowmobile trails on Canal Corporation property and to allow the use of snowmobiles on the Champlain Canalway Trail. The consideration for adopting this Resolution was tabled to allow Board Members the opportunity to review the proposed Resolution. Supervisor Willard Peck stated he had some questions regarding this proposed Resolution. The Town Board tabled the consideration of adopting this resolution.

3. C & S Construction has requested a Performance Guarantee Reduction on Brampton Woods Phase I & II. The Performance Guarantee required covering the remaining work and the required 20% retainer for the completed work would be in the amount of \$145,385.20. The Planning Board sent a letter to the Town Board stating the Northumberland Planning Board, at their October 20, 2008 monthly meeting, made a motion to recommend the Performance Guarantee Reduction for Brampton Woods be accepted as it was conveyed in a letter from the Town’s Engineer, James Mitchell, PE to Mr. Richard Colozza, dated October 1, 2008. Supervisor Willard Peck made a motion to table C & S Construction request for a Performance Bond Reduction of Brampton Woods until the Town Board can review. Councilman Daniel Gale seconded the motion. All in favor, motion carried.

NEW BUSINESS

1. 2009 Town Budget: Supervisor Willard Peck made a motion to adopt the 2009 Town Budget as presented. Councilman Paul Bolesh seconded the motion. Open for discussion. Councilman Daniel Gale stated he is not sold on creating a full time position and still maintaining a part time position. Councilman Daniel Gale said if this was the private sector this would not be acceptable. Councilman Gale stated he can not justify a \$20,000 increase in personal services in the Justice Department for an estimated increase in revenue of \$2,000. Councilman Daniel Gale stated other than that, it is a good budget.

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Supervisor Willard Peck – “Aye”

Councilman Paul Bolesh – “Aye”

Councilman Daniel Gale – “Nay”

Councilman George Hodgson – “Aye”

Councilwoman Patricia Bryant – “Aye”

Motion adopted

DESIGNATIONS

1. Councilwoman Patricia Bryant approved vouchers for payment as presented. Councilman Daniel Gale seconded the motion. All in favor, motion carried.

Councilman Daniel Gale stated he would like the Town to start preparing a Newsletter for January.

Councilman Paul Bolesh made a motion @ 9:35 PM to go into Executive Session to discuss litigation. Councilwoman Patricia Bryant seconded the motion. All in favor, motion carried.

Councilman George Hodgson made a motion @ 9:50 PM to reconvene the Regular monthly Meeting. Councilwoman Patricia Bryant seconded the motion. All in favor, motion carried.

Supervisor Willard Peck stated the Town Board received litigation updates from the Town Attorney. No action was taken.

Councilman Paul Bolesh made a motion @ 9:55 PM to adjourn the Regular Monthly Meeting. Councilwoman Patricia Bryant seconded the motion. All in favor, motion carried.

Respectfully submitted,

Denise Murphy
Town Clerk

