

Minutes of the meeting of the Town Board of the Town of Durham held November 16, 2004 at the Town Building in Oak Hill, N.Y.

Present: Gary Hulbert - Supervisor
 Robert Elpel - Councilman
 Jodi Wood – Councilwoman
 Linda Sutton – Councilwoman

Absent: William A. Carr, Jr. – Councilman

Recording Secretary: Chris Kohrs – Deputy Town Clerk
 Others Present: Wesley Moore - Highway Superintendent
 Tal Rappleyea – Attorney for the Town
 Charles Soderblom – Town Clerk

The Supervisor called the meeting to order at 7:30 P.M. with the Pledge to the Flag. Fifteen people were present.

Mr. Elpel made a motion and seconded by Ms. Wood to approve the minutes of October 5, October 12 and October 19. All were in favor.

Legislator Ohm reported that they have been busy working on the County budget. The 2005 budget: appropriations \$86,223,883. and to offset that they have used \$2,875,000. from this, years fund balance. The revenue from the state will amount to \$68,258,174. That equals a total tax levy of \$17,937,430, which is up 6.9%. The 2004 budget had gone up 16%. There are still two more budgeting sessions and they hope to bring it down some more. The Medicaid Program has been increasing the budget. The state had been funding 100% but now they are increasing the amount for the county. This years total for Medicaid from January to September is \$37,280,584. The state picks up a percentage and the county's part is seven million toward the total. Mr. Ohm received a letter that St. Paul's Lutheran Church will be considered for nomination to the National and State Register of Historical Places. Mr. Nahas said that St. Paul's is one of four that is up for nomination along with the Methodist Church, Parsonage and the red house, which belongs to Eric Kaider.

Wesley Moore read the Highway Superintendents Report for October. The crew has been working on the dirt roads for winter and trimming trees on Moore Road and Sutton Road. The equipment is all ready for winter. Wes asked for permission to purchase a 2005 Dodge Ram with plow for \$22,931.50. Delivery will not be until about March of April of 2005. This will replace the 2005 Dodge Dakota.

Councilman Wood offered the following resolution and moved its adoption:

WHEREAS, the Town of Durham has need of a pickup truck with snowplow to maintain the roads; and

WHEREAS, the State of New York has advertised and has selected Albany Dodge as the lowest responsible bidder with a bid of \$22,931.50 based on 2005 NYS contract #PC60922 item #14b.

WHEREAS, this bid is available for the Town to purchase said pickup;

NOW THEREFORE, be it

RESOLVED, that the Town of Durham does hereby purchase said 2005 Dodge Ram 2500 St Regular Cab 4x4 ¾ ton P/U truck with amber revolving/mini strobe light, rust protection, mud flaps, bed mat, 8’ Fisher plow, 8’ rubber snow deflector.

Seconded by Councilman Elpel.

**Ayes: 4 Wood, Elpel, Sutton and Hulbert
Noes: 0
Absent: 1 Carr**

Al Schmidt read the building inspectors report. Mr. Hulbert asked for approval to join the American Concrete Institute at a cost of \$192. A membership allows access to any documents that they have. This would take the place of the six-volume book set at a cost of \$473. **Mr. Elpel made a motion and seconded by Mrs. Sutton to allow Mr. Schmidt as the Town of Durham Building Department to join the American Concrete Institute. All were in favor and the motion carried.**

The judges’ report was received.

Mr. Sutton read the police report.

Attorney Tal Rappleyea said that the town has 38 days left to answer the appeal on the violations on the Cimino Trailer Park. **In the Matter of the Appeal of FRANK CIMINO/ Pines Trailer Park,
RESOLUTION AND DECISION**

The Town of Durham enacted an ordinance entitled “The Regulation of Mobile Homes and Mobile Home Parks and Travel Trailers and R.V. Parks in the Township of Durham” in August 28, 1971 which was later revised on August 2, 1989 and again in May 11, 1993. Among other things, the ordinance establishes a licensing/permitting process for mobile homes, trailers and recreational vehicles and creates minimum standards for set backs from property lines and road ways and certain building standards.

The Appellant owns and operates the Pines Trailer Park located in the hamlet of Oak Hill, Town of Durham which he purchased in June of 2003. The

Park itself appears to have been in existence since prior to the enactment of the Town ordinance and thus the use as a trailer park is grandfathered. The Town Attorney, in an opinion relating to this particular trailer park in November of 2001, informed the Town Board the use as a trailer park was pre-existing and non-conforming and thus it could continue to exist in its then current form. That opinion also determined that since the ordinance does not address the manner in which such grandfathered uses are to be treated that as long as the homes in the park did not change they could not be regulated by the Town. The only agencies with authority to remedy alleged violations in connection with existing homes in the park would be State agencies such as the Department of Health.

In the case at hand, the park has changed ownership and the new owner (the Appellant herein) has begun a commendable project of upgrading some to the mobile homes within the park. However, the Town Code Enforcement Officer has alleged, among other things, that the Appellant failed to obtain the necessary permits for the upgrades and that some of the upgrades do not meet the minimum standards of the Town ordinance. The appellant was summoned to Durham Town Court seeking compliance with the ordinance and the instant appeal ensued. The proceedings in the Town Court have been stayed as a matter of law, during the pendency of this appeal.

Preliminarily, the Town Board finds that the within decision is not subject to the New York State Environmental Review Quality Act as a "Type II Action" as defined in 6 NYCRR Part 618.5 (c)(31). Further, the Town Board finds that it need not refer the within application to the Greene County Planning Board pursuant to Section 239 (l) and (m) of the General Municipal Law.

The Appellant argues that the new home(s) that are replacing older ones need not conform to the Town ordinance since such new homes are also grandfathered, similar to the existing homes in the park. This Board does not agree. The Appellant is to be commended for his efforts to upgrade the homes within the park, since many have become out-dated. However, merely because he is placing the new mobile homes in the same place as that of a prior mobile home, does not mean that he is not subject to the Town ordinance. The Town ordinance was enacted to "...promote the health, safety, morals and general welfare of the community, including the protection and preservation of the property of the Town of Durham and of its inhabitants by establishing specific requirements and regulations governing the occupancy and maintenance of mobile homes, mobile home parks...." Thus, this Board finds that since the clearly stated intent of the ordinance is to protect the people of the Town of Durham, then there is no rational basis to find an exception to the applicability of the ordinance to new mobile homes, regardless of the location of the same.

If this Board were to accept the argument stated by the Appellant, then by the same reasoning any new home built in the same location as a previous one, need not conform to State building codes. That result would clearly not be reasonable or

appropriate to achieve the stated purpose of the ordinance. Therefore, the appeal is hereby denied and the matter is referred back to the Town Court for further proceedings.

Resolution offered by Council person Jodi Wood, seconded by Councilman Robert Elpel and carried unanimously.

Dated November 16, 2004

The counsel is completing the research on the Fabbri property and Tal will work with them if he is needed.

There was no dog control report.

Mr. Hulbert read the Historical Committee report for November. The commission received a letter of resignation from Susan Wood as she has moved from the area. This leaves an opening on the commission until December 2005. Mr. Ken Dean has been recommended to fill the vacancy. **Ms. Wood made a motion and seconded by Mrs. Sutton to approve Mr. Ken Dean as a member of the Historical Commission until December 2005. All were in favor and the motion carried.** The commission received notification that four properties in Oak Hill are being considered for nomination to the National and State Register of Historical Places. The St. Paul's Lutheran Church, Durham-Oak Hill Methodist Church, Oak Hill Parsonage, and the house owned by Eric Kaider.

Mr. Hulbert read the Task Force Report for October. They discussed the Reading Room.

Mr. Hulbert reported that the Oak Hill Historic Sign would need to be moved from its present location. The new site is the Twelve Tribes Parking Lot. Wesley will take care of the installation.

Mr. Hulbert read a letter from the NYS Police regarding the speeding on Rt. 81 in Oak Hill. They monitored the vehicle speed limit on three different dates at prime hours and issued seven summonses as a result.

The Christmas in Durham Committee has asked for \$1000 from the town to pay for the fireworks and kiddy rides, which the Handel's provide. Attorney Rappleyea explained that the Comptrollers Office frowns on Towns giving donations out and should have a contract with the person who is receiving the check. Tal will issue a contract to the Handel's to provide services for the Town celebration at a cost of \$1000. This will satisfy the comptroller's requirements. **Mrs. Sutton made a motion and seconded by Mr. Elpel to approve the contract with Roy Handel to provide entertainment at a cost of \$1000 for the Christmas in Durham celebration. All were in favor and the motion carried.**

Mr. Hulbert brought up for discussion the matter of private roads. Enchanted Valley Road West was the most recent private road that the residents were asking for help with. Attorney Rappleyea will draft a letter to each property owner in the area explaining that they are responsible for the road and the town cannot do any repairs. There has not been any noticeable improvement to McStein Lane. Mr. Hulbert suggested that we incorporate into our subdivision law that if a road is to be built into a subdivision that an agreement is made between the developer and buyer for a legal responsibility for the repairs to the road. Attorney Rappleyea discussed the possibilities. Tal read from the subdivision law, Sec 6 Sub paragraph C, that roads had to meet town specifications. There will be further discussion at the next meeting.

Mr. Hulbert reported that he had solicited bids for the fence repair at Brandow Park. Catskill Fence submitted a bid of \$2490. Mr. Hulbert contacted two others, one in Kingston and they said their bid would be more than our local bid. The other had not submitted a bid. Mr. Hulbert asked for permission to proceed with the repairs. There was discussion on whether the town needed three written bids in order to proceed. Attorney Rappleyea said that if one of the other companies put something in writing it would cover the bases.

Ms. Wood brought up the subject of grants. She suggested a professional to assist us with the grants. Mr. Fried thought we needed to look at a comprehensive plan. Mr. Karkheck reported that we need to have a professional to help and the county will assist us. Mr. Rappleyea suggested setting up a committee and mapping out a plan. Mr. Hulbert will contact Nan Stolzenberg, a comprehensive planner to a meeting.

Mr. Hulbert mentioned that Rt. 67 is now open for traffic.

There is a meeting scheduled for December 14, 2004 at 7pm with Dr. Goldstein to do a tabletop exercise on the town level.

Mrs. Sutton made the motion seconded by Ms. Wood to approve the following transfers. All were in favor the motion carried.

From:	A1990.400 Contingent	\$ 150.80
To:	A1110.400 Court Contractual	
From:	A1990.400 Contingent	\$ 1,000.00
To:	A1410.400 Town Clerk Contractual	
From:	A1990.400 Contingent	\$ 1,100.00
To:	A1420.400 Law Contractual	
From:	A1450.151 Election Personal Svc.	\$ 150.00
To:	A1450.400 Elec. Contractual	

From:	A1990.400 Contingent	\$ 750.00
To:	A7310.400 Youth Program Contractual	
From:	DA5132.100 Machinery Equip.	\$ 700.00
To:	DA5130.400 Machinery Contractual	
From:	Hwy Surplus	\$ 6,000.00
To:	DA5142.400 Snow Contractual	
From:	A1990.400 Contingent	\$ 175.00
To:	A1460.150 Records Per Ser	

Mr. Hulbert received communication that the speed limit reduction to 40 mph requested for Clay Hill Road has been approved. No communication has been received regarding the speed reduction for the village of Oak Hill.

Alan Beechert reported was made on the 911 signs. Oak Durham Fire Co. has completed signage for twelve roads, thirty-two roads the signs are completed, and in the process of being posted, signs have been ordered for the remaining eighteen roads. East Durham has eighteen roads that have signs made or being made.

Christy Marsh of Realty USA addressed the board regarding the pending purchase of 155 acres of land located off State Route 145 behind the Durham Center Museum. The potential buyer would like to purchase the property to construct a two mile paved motorcycle safety course for street legal bikes. This is not intended to be a spectator venue but rather a day trip-training center for city youth etc.

Abstract #421, consisting of Vouchers #893 through #957 for \$39,979.28 was reviewed and approved for payment. The total amount was broken down as follows:

General Funds	\$16,879.28
Highway Funds	\$22,568.61
Street Lighting	\$ 531.39

Ms. Wood made the motion seconded by Mrs. Sutton to adjourn at 9:15 p.m. all were in favor motion carried.

Minutes approved:

Chris Kohrs, Deputy Town Clerk