

The November 21, 2006 regular meeting of the Town Board of the Town of Halfmoon was called to order at 7:05 pm by Supervisor DeCerce at the Town Hall on Harris Road with the following members present:

Kenneth J. DeCerce, Supervisor  
Walter F. Polak, Councilman  
A. James Bold, Councilman  
Regina C. Parker, Councilwoman  
Melinda A. Wormuth, Councilwoman  
Mary J. Pearson, Town Clerk  
Lyn A. Murphy, Town Attorney

Also present: John Pingelski, Highway Working Supervisor; Lisa Perry, Secretary to Supervisor.

The Town Board Workshop was held in the Board Room at 6:15 pm; no action was taken. Supervisor DeCerce led the Pledge of Allegiance.

Supervisor DeCerce welcomed former Town Councilman Tim Reilly to this meeting.

At 7:05 pm Supervisor DeCerce opened the public hearing for the Backyard Burial Legislation

Lyn Murphy, Town Attorney, stated that the legislation allows the Town Board to regulate when people choose to create family burial plots in their back yard. She stated there are regulations by the State for the formulation of a cemetery corporation which regulates what can and cannot be done but if the people who are burying the person in their yard don't form a corporation there is no regulations to prevent them from burying whomever in their back yard. She stated there are some crimes associated with improper disposition of a deceased person, however, if a funeral home signs off on the burial in the private property there is no regulations to prevent this from happening. She stated the Town has asked her to come forth with a regulation, which many surrounding communities already have, which prohibits the burial of a person on private property unless and until the Planning Board and code enforcement have an opportunity to determine that there won't be any public health and safety issues associated with the burial of the body, i.e. contamination of water sources, soil, the distance between the nearest residents, the size of the property. She stated it will also establish the creation of a maintenance bond for that cemetery plot. She stated most family cemeteries that people are familiar with in the Town, the ones not maintained by the Town, there is a cemetery corporation in existence that is regulated by New York State law and has the same conditions within in, i.e. the maintenance bond to ensure that the land is maintained in accordance with the laws and regulations of the State of New York.

Tim Reilly, 47 Ushers Road, questioned the term "Backyard Burial" and stated he thinks a more appropriate term would be a "Family Cemetery" rather than a backyard burial. He also questioned the creation of a corporation and asked if it is by the effect of the permission of the Town Board or the Planning Board does that, by default, create the corporation.

Attorney Murphy answered it does not, if the corporation was not created this allows the Town to provide for the maintenance bond to make sure that the cemetery is kept up. She stated a cemetery corporation by State law once it is created there are several regulations that would apply to a family cemetery. She stated if a family cemetery plot is created without the creation of the corporation there would be no regulations from the Towns standpoint to make sure that the cemetery was upheld. She stated what has happened in the past is that people would create a family cemetery and then their land would become difficult to sell because it would be burdened by this cemetery and, there would be no provision of funds to help alleviate the burden of having vacant land.

Mr. Reilly asked if, currently the operations or the creation of a family cemetery is governed by the New York State Public Health.

Attorney Murphy stated, if a corporation is established it is, but a basic family cemetery is not and that is what the Town is trying to help because right now there is no provision to create it and this will basically enable the creation while allowing the Town to regulate it.

She stated the Association of Towns and all the literature refers to it as the backyard burials and she apologizes if that is offensive.

Mr. Reilly stated it is only his opinion it is more of a family cemetery than taking a pet out back.

Mr. Reilly questioned the necessity of creating a maintenance bond by the formation of the corporation and asked how it would be governed and who would set the stipulations as far as the value of the bond. He asked if there is a limitation on size from family versus non-family and asked if there is a certain trigger on size.

Attorney Murphy stated that would be done as part of the planning process for the creation of the plot determined on size of the proposed parcel. She stated the regulations have more to do with the size of the original land it is to be created in because there needs to be certain setbacks from houses, etc. She stated if some one has a family cemetery it doesn't mean you have a cemetery corporation. She stated until they create the Town law there is no family cemetery regulations and the Town Law will mirror the regulations of a cemetery corporation for a family cemetery. She stated the State has acknowledged that these things need to be regulation but they did not take it the extra step as to how to regulate them if they are not a corporation. She stated they are now making this ordinance under the home rule message.

Mr. Reilly stated it was mentioned several times the distance from a residence and, asked if that is the residence of the primary land owner that the cemetery would be situated on or is it a neighbor and, asked if it would be with or without their consent.

Attorney Murphy stated it would be a neighboring property. She stated the Planning Board would have the authority so long as there isn't any danger to the water, soil or the public health and safety of the neighboring properties. She stated she built in a little more flexibility to the Town statute than the Department of State statute.

Mr. Reilly acknowledged there are specifics in the current statute as far as distances go without acknowledgement from the neighboring household that it would not be permitted but if they gave permission and acknowledged that it was situated there and while the other criteria was met that would be acceptable.

Attorney Murphy stated that is correct and the way ours is worded it will mirror the State statute without the need for the incorporation.

Mr. Reilly asked, prior to the use of the cemetery do you have to go through and create the corporation with the Board members.

Attorney Murphy stated the corporation does not have to be created if a person is proceeding under the Town Law and, the Town Law steps in when the corporation is not created.

Mr. Reilly asked if, in the legislation is there a part that says you need to have certain number of people that govern the operation and maintenance and, asked if it should have.

Attorney Murphy stated that is a Board decision but if she felt it should be included she would have done that and, as long as there is a properly posted bond with the Town then she doesn't feel that the Town board needs to make that determination.

Mr. Reilly asked for an explanation of a properly posted bond and asked what the formula is to create the bond.

Attorney Murphy stated the concern with a private cemetery is that it will fall into disrepair and there will not be funding or a person responsible for maintaining the cemetery but with a bond posted with the Town the Town can cash in that bond when it is determined to be necessary. She stated therefore they don't need a corporation to be responsible for keeping the cemetery up to date and the amount of the bond will be dependent on the size. Attorney Murphy stated there isn't a set formula but is based on what the engineers tell us what is necessary. She stated the State also does it this way because of change in costs from year to year for maintenance and they don't want to set a formula because what was satisfactory twenty years ago might not be satisfactory today.

Mr. Reilly asked just for clarification, how will the Town generate this Bond, at the Town Board or Planning Board level, at some point when the bond is created, which is a guarantee of payment if the parcel falls into disrepair, if it is created in 2006 and goes along well or ten years and then doesn't costs escalate.

Attorney Murphy stated there will be an annual review of the amount of the Bond.

Councilwoman Wormuth asked if they use a formula to figure it out even if the dollar amount every year is arbitrary is it times the number of plots times X amount of years. She asked what we would use for a perpetual year and stated there has to be some sort of number even if the dollar amount escalates or if there is an amortization.

Attorney Murphy stated she does not know the figures that is used to determine the appropriate bond but does know it includes the cost of exhumation because the purpose of the bond is if the cemetery is not going to be maintained and continued then it cannot be a cemetery anymore.

Mr. Reilly stated he thinks that the legislation should have some type of a safeguard should the cemetery fall into a state of disrepair but would not want it to cripple the individual that would like to have a family cemetery.

Attorney Murphy stated that is not the intent of the Board and can check with the State Division of Cemeteries and she will look into the formula issue.

Mr. Reilly asked if the legislation would also require that the property be subdivided or can it be just identified.

Attorney Murphy stated it is identified on the deed with the deed restrictions with the metes and boundaries and, stated they wouldn't want it subdivided off because then it wouldn't be part of the property.

Supervisor DeCerce stated Mr. Reilly comes from a farm that has been out into Saratoga PLAN so it will be open space in perpetuity.

Attorney Murphy stated she checked with Saratoga PLAN and it is her understanding there are no limitations in the agreement reached with Mr. Reilly.

Mr. Reilly stated he also has spoken to Saratoga PLAN knowing it will amend the Saratoga PLAN as it was created in the fact that there will be a cemetery. He stated he has applied for a family cemetery and stated he is fourth generation and lives on the farm and three of them have sat on the Town Board and they are a family dedicated to this Town.

Supervisor DeCerce asked if there is any parallel to the abandoned cemeteries in the Town that we take care of.

Attorney Murphy stated that is exactly why we are doing this to be able to prevent the burden to be passed on to the taxpayer.

Mr. Reilly asked, as the Town begins to build and continues to develop there are a number of cemeteries that have been here a number of years what is the process if an individual wants to build a home within a certain range of a cemetery.

Attorney Murphy offered to research that issue but in essence if it's a cemetery you can't build a house on it.

The Supervisor closed the public hearing at 7:25 pm.

Councilwoman Wormuth stated, heading up the open space committee she feels it is important they included and allow for people to still be part of it if people do decide to put their land in perpetuity.

Councilman Polak stated the cemeteries we presently take care of are financial set up by the Board for funds for the upkeep of them. He stated years ago they were in disrepair and they have come a long way. He suggested that they discuss some of the things brought up tonight with the Town Attorney. He stated he would like this Board to have some visions for a community cemetery in our Town and thinks its time we look into a cemetery.

Councilman Bold asked who has authority to access a bond to be able to do some work and questioned if public access is granted.

Attorney Murphy stated by the creation of the cemetery they are enabling the Town to go access.

Councilman Bold asked if there is a requirement for ground water wells in terms of distance.

Attorney Murphy stated there is a requirement in the State law specific with regard to distance and the Town law refers to the State law but does give the Planning Board the authority to locate the burial spots to ensure no groundwater contamination.

Councilman Bold stated there are some instances where there is an existing cemetery within 50 feet of residences. He stated the residences have been build since the grave sites and probably before the Town had a building permit process. He asked about subdivision of the property and if a large subdivision owner creates a plot are there prohibitions against further subdivisions of that property.

Attorney Murphy answered no but the realistic answer is because of the parameters of the plot being in the deed the deed restriction in and of itself would prohibit a person from subdividing but if it is a 10 acres with a burial plot on a portion of it doesn't mean that the two acres in the corner couldn't be subdivided off in the future.

Councilwoman Parker asked if we are going to regulate the number of plots.

Attorney Murphy stated in the legislation as it is proposed right now there is not. She stated there are limits based on how close you can be to an existing house but there are not limitations on the size of the burial plot. She stated she look into this if the Board wishes here to. She stated a definition of a family cemetery is that a plot cannot be sold for profit

Councilman Bold stated he would be interested in some sort of a cap since we are talking about small family cemeteries and the purpose is not to create twenty-five burial sites.

Mr. Reilly stated it was mentioned it was difficult to mention numbers and if there was 25 he doesn't think it would be unreasonable in the long term and he would caution putting a cap on it.

Supervisor DeCerce stated he would like to ask to have this brought up under Old Business to allow time to do some further research.

## **REPORTS OF BOARD MEMBERS AND TOWN ATTORNEY**

Councilman Polak reported on the Hazardous Waste Day at the Clifton Park transfer station stating we had 24 participants at a \$16.00 cost per participant for a total of \$384.00. He stated our shared cost with the Town of Clifton Park and Malta was \$775.56 for a total invoice amount of \$1159.56. He stated when he first looked into this for the Town of Halfmoon to stand alone it was \$20 to \$30,000.

The Supervisor stated there are some issues with other Towns wanting to get involved and have the County take it over, which he doesn't feel will work well. He stayed rather they should group together themselves.

Councilwoman Wormuth reported that on Saturday they held our Annual Food Drive and thanks to the support received from businesses and individuals they delivered Thanksgiving baskets to over 70 families.

Councilwoman Parker reported that December 7<sup>th</sup> is the Tree Lighting and this weekend is out Christmas Parade.

Councilman Bold reported he has an update on the construction projects; the Water Treatment Plant all the in ground concrete work is complete, the large filter units are in place; the large generator will be installed tomorrow; the steel building framework is being erected at this point in time and the project is on schedule and on budget. He stated the Water System Improvement has the Woodin Road complete and the residents in the process of connecting; the Route 236 loop is completed and those residents are connecting; the Route 146 loop is now completed and within a few days the letters will go out telling the residents they may connect. He stated the line is complete all the way down Upper Newtown Road and through the canal and is connected to the water plant itself; residents of Upper Newtown Road cannot connect for several months.

He reported on the new Town Hall project; the footings are all in; the concrete foundation work is 2/3 complete; the excavation is underway for the drainage and storm water retention stems; the wells are complete and the piping is in the wells and this project is on schedule at this point in time.

Supervisor DeCerce reported on the \$112,000 grant from the Canal Corp. and hopes to hear more about grants for member items and those things we are expecting. He stated we are in the realm of about \$4 million dollars we have garnered through grants, almost \$3 million from our former Congressman; however this staff has moved in the direction of asking for funds from other places. He stated they have to determine how to implement these grants and they need staff dedicated to that responsibility. He stated Mr. Lee has been doing most of that and another person and the Planning department took on helping. He stated we need to look at another person to help with the proposals and dedicated to that and stated he is looking for the Board to agree to let Mr. Lee go forth and start researching for this person.

Councilman Bold stated the Budget they adopted has provisions in it for one additional full time person so the timing is appropriate for him to proceed to create the job descriptions and start looking for someone to fill that position.

The Supervisor stated he appreciates the work John Pingelski did for the Parade and Bonfire and fireworks for the week-end.

He stated the property at Colonial Green Bayberry Road has been finalized and the Town Assessor has been working on this with Mr. Deets.

He stated that Stanley Kivort gave us \$500 toward the refreshments he purchases for meetings at Town Hall. He stated Degussa has helped with this in the past.

He reported that today at the County there was an amendment to the New York State Environmental Conservation Law to include Saratoga County within the boundary of the Hudson River Valley Greenway.

He stated they also approved the Green infrastructure Plan for Saratoga County; repealed Saratoga county's cents per gallon rate of sales and compensating use taxes on motor fuel and diesel motor fuel, restoring the percentage rate of such taxes, pursuant to the authority of Article 29 of the Tax Law.

The Supervisor opened public privilege for discussion of agenda topics.

Bruce Tanski, asked what will Clough Harbour do, relative proposal to provide assistance with the implementation of the MS-4 and how is it going to affect him.

Supervisor DeCerce state the Storm water Management program is something that needs to be done this will allow the engineers to help walk us through the procedures to make sure it is correctly done.

Attorney Murphy stated the State has new regulations which the Town is required to comply and some are enacted on an annual basis and become more stringent as the year's progress. She stated it requires the Town to take on additional responsibility regarding regulating to make sure the storm water management is being addressed. She stated part of this is for the Town to provide public informational seminars and decimate the information. She stated the engineers have the expertise to provide a service to the Town in helping educate our employees as to how to do this maintenance.

Mr. Tanski stated he doesn't have a problem with this and agrees with it but his concern is that he doesn't want to see another layer of enforcement or inspections. He stated when they have their storm water management approved by DEC, they must by law, have an engineer come to their site on a weekly basis and reports have to be filled out and sees this as an extra layer of enforcement.

Attorney Murphy stated changes in the legislation mandate that the Town ensures that you are in compliance with DEC and used to be a direct relationship with the developer and the DEC and they're not putting the Town as responsible party to mandate that the developer is complying with DEC. She stated they are not new regulations that the Town is creating but a new responsibility for the Town in playing a part to ensure that the builder is in compliance with the DEC.

Councilwoman Wormuth stated Clough Harbour is also educating our employees on how to do this so we do not contract with them to do this.

Councilman Polak stated not everyone monitors their own situation and he overlooks all his projects.

George Hansen commented on the Halfmoon Center Plan and stated there were at least two workshops prior to this being finalized and it was attended by many residents who participated and gave input and that needs to be kept in mind. He stated at the last meeting a few people took pot shots at the plan but a lot of other people participated at the workshops and hopes it doesn't get shot down at the last minute by a couple of people. He stated it is a conceptual plan

#### **DEPARTMENT REPORTS – month of October**

##### **1. Building**

Total Permits -	78	Total fees remitted to the Supervisor -	\$15,100.00
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Filed.

##### **2. Fire Code**

Total Permits -	17	Total fees remitted to the Supervisor -	\$ 650.00
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Filed.

#### **OLD BUSINESS**

1. Resolution to approve the Town Board as Lead Agency for the Halfmoon Center Plan and authorize the Negative Declaration.

2. Resolution to adopt the Halfmoon Center Plan.

NEW BUSINESS  
RESOLUTION NO. 283

Offered by Councilwoman Parker seconded by Councilman Bold: Adopted by vote of the Board:  
Ayes: DeCerce, Polak, Bold, Parker, Wormuth

RESOVLED, that the Town Board approves the Supervisor’s Report for month of October 2006 as presented.

RESOLUTION NO. 284

Offered by Councilwoman Parker, seconded by Councilman Polak: Adopted by vote of the Board: Ayes: DeCerce, Polak, Bold, Parker, Wormuth

RESOVLED, that the Town Board approves and orders paid all vouchers for all funds listed on Abstract dated November 21, 2006., totaling: \$3,456,236.30

RESOLUTION NO. 285

Offered by Councilwoman Parker, seconded by Councilwoman Wormuth: Adopted by vote of the Board: Ayes: DeCerce, Polak, Bold, Parker, Wormuth

RESOLVED, that the Town Board authorizes the Supervisor to make the following Creation of Appropriations and Transfer between Appropriations.

A resolution is needed to create the following budget amendment of appropriations and revenues in the Special Revenue Fund for engineering fees for on site quality inspections. These funds are developer’s monies held in escrow by the Town in a regular checking account and used for the payment of costs for that particular project. This resolution is necessary to comply with proper accounting procedures as set forth by NYS Department of Audit and Control.

Debit: Estimated Revenues CM510 \$54,734.61  
Subsidiary: CM2189 Home & Community Services \$54,734.61  
Credit: Appropriations CM960 \$54,734.61  
Subsidiary: CM1440.4 Engineering Contractors Inspections \$54,734.61

Information Only: The above was derived from the following breakdown of charges to be paid on the November Abstract for engineering and related fees:

NAME	AMOUNT
Lawrence Circle	\$1,104.00
Howland PDD	120.00
Stone Crest Preserve	240.00
Rolling Hills	13,064.28
Westbrook	1,157.46
Rolling Hills	171.00
Rolling Hills	240.00
Farmview Ph II	11,506.72
Oakbrook Commons	869.90
Spinuzza	240.00
Pointe West Townhouses	705.00
Arlington Heights	57.00
Windsor Woods	890.00
Windsor Woods	1,722.00
Stenner Pump	114.00
Lussier’s Autobody Comm	576.00
Hedley Prof Office	355.35
Hedley Prof Office	424.50
Hedley Prof Office	612.00
Sheldon Hills	232.45
Clemente PDD	120.00
Lawrence Circle	896.90
Vosburg Rd PDD	114.00
Shops of Halfmoon	3,079.00
Shops of Halfmoon	1,050.00
Pointe West Town Houses	3,161.50
Halfmoon Heritage Apartments	2,956.00
Halfmoon Heritage Apartments	1,356.68
Fellows PDD	43.00
Fairway Meadows-Insp	302.50
Fairway Meadows-Insp	618.68
Fairway Meadows-Insp	5,755.89
Fairways PDD	604.35
Fairways PDD	274.45
Total	\$54,734.61

Transfers Between Appropriations:

From Account	To Account	Amount	Reason
DA5130.40 Highway Machinery Contractual	DA5130.20 Highway Machinery Equipment	\$6,000	Transfer of appropriations within own budget to cover expenses thru year end

DA5130.40 Highway Machinery Contractual	DA9010.80 Employee Benefits Retirement	\$1,100	Additional appropriations needed to cover retirement expense for current year
AO7140.10 Recreation Personal Services	AO7140.40 Recreation Contractual	\$5,000	Transfer of appropriations within own budget to cover expenses thru year end
AO7140.20 Recreation Equipment	AO7140.40 Recreation Contractual	\$6,500	Transfer of appropriations within own budget to cover expenses thru year end
AO1990.40 Contingency	AO9010.80 Employee Benefits Retirement	\$300	Additional appropriations needed to cover retirement expense for current year
FO1620.40 Buildings Contractual	FO9010.80 Employee Benefits Retirement	\$2,600	Additional appropriations needed to cover retirement expense for current year
FO9950.93 Debt Service-Z3 Capital Reserve	FO8340.20 Transmission & Distribution Capital Outlay Meter Purchases	\$10,000	Transfer of appropriations needed within own budget to cover meter purchases thru year end

RESOLUTION NO. 286

Offered by Councilwoman Parker, seconded by Councilwoman Wormuth: Adopted by vote of the Board: Ayes: DeCerce, Polak, Bold, Parker, Wormuth

RESOVLED, that the Town Board approves New Town Hall, Change Order No. 2, Contract No. 1, Malone & Tate Builders, Inc., to provide and install flowable fill to allow building footings to bear on Glacial Till in the total amount of \$32,000.

RESOLUTION NO. 287

Offered by Councilwoman Wormuth, seconded by Councilman Bold: Adopted by vote of the Board: Ayes: DeCerce, Bold, Parker, Wormuth Abstain: Polak

RESOVLED, that the Town Board authorizes proposal from Clough Harbour & Associates to provide assistance with the implementation of the MS4 Permit’s Storm Water Management program in the not to exceed amount of \$3,500 per year, subject to review and approval of the Town Attorney.

RESOLUTION NO. 288

Offered by Councilman Bold, seconded by Councilwoman Wormuth: Adopted by vote of the Board: Ayes: DeCerce, Polak, Bold, Parker, Wormuth

RESOLVED, that the Town Board authorizes membership in the New York State Turfgrass Association Inc. for Bruce Betts, Paul Maiello and (Kenneth DeCerce) designee to replace Kenneth DeCerce to be named in the near future, in the 2007 membership amount of \$260.00

Public privilege for discussion of non-agenda items was opened by the Supervisor.

There being no further business to discuss or resolve the meeting was adjourned at 8:10 pm.

Respectfully submitted,

Mary J. Pearson  
Town Clerk

