

The February 01, 2012 regular meeting of the Town Board of the Town of Halfmoon was called to order by Supervisor Wormuth at 7:00 pm in the A. James Bold Meeting Room at the New Town Hall with the following members present:

Melinda A. Wormuth, Supervisor
Walter F. Polak, Councilman
Paul L. Hotaling, Councilman
Craig A. Hayner, Councilman
John P. Wasielewski, Councilman
Lyn A. Murphy, Town Attorney
Lynda A. Bryan, Town Clerk

Matthew J. Chauvin, Deputy Attorney -Excused

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

REPORTS OF BOARD MEMBERS AND TOWN ATTORNEY

Supervisor Wormuth said that she has a letter that she would like to read from Bruce Tanski withdrawing the PDD application for the proposed Halfmoon Station Apartments.



Bruce Tanski Construction & Development, LLC
457 Route 146 • Clifton Park, NY 12065 • Ph: (518) 357-3275 • Fx: (518) 357-3277

RECEIVED

JAN 31 2012

TOWN OF HALFMOON
Office of the Supervisor

January 31, 2012

Town Of Halfmoon
Supervisor Melinda Wormuth
2 Halfmoon Town Plaza
Halfmoon, NY 12065

RE: **Halfmoon Station Apartments, Carey Road, Halfmoon, NY**

Dear Madam Supervisor;

This letter is to inform you that I will be withdrawing my PDD application for the proposed Halfmoon Station Apartments project, Carey Road, Halfmoon, NY.

I believe it is in the best interest of the Town that I withdraw my application for the aforementioned apartment project at this time.

If you have any questions or concerns please feel free to contact me at my office at 357-3275.

Respectfully,

Bruce C. Tanski
Owner/President

BT/sji

file

RECEIVED

JAN 31 2012

TOWN OF HALFMOON
LYNDA A. BRYAN, TOWN CLERK

Supervisor Wormuth gave the letter to the Clerk and mark it Received & Filed

PUBLIC PRIVILEGE (for discussion of agenda topics)

Attorney Murphy told the public that in case they did not get a chance to look at the agenda for this evening, Intermodal is on the agenda. So if you are here to speak on that, this would be the time to address the Board.

Wayne Allan & wife Winifred 7A & 9C Fairway Drive, I am here about the noise from Intermodal. I have contacted the Supervisor, the Planning Department and also contacted the railroad company and talked to Mr. Becker about the noise in the wee hours of the morning. We were affected as soon as they started full operation about the second week in January and were awakened about 2:30 in the morning by the crane activity. It keeps us up and hasn't stopped. I am hoping that the Council and everyone here will look and hear, not only me, but also my neighbors. It really is affecting our way of life. My wife and I came here and to live and to retire. I think

that a noise study should be done and if something can be mitigated to stop the noise in the wee hours of the morning. I would invite anybody to listen to the cranes go on and off, it is an annoying sound.

Another thing that I have noticed is the train traffic. They have allowed the trains to go through rather quickly. Before it was slow and methodical, wasn't so antagonizing, but this has had a major impact on the quality of our life. I ask that Council take a look at this and work with the neighborhood to see if we can come up some reasonable solutions.

Supervisor Wormuth thanked Mr. Allan; I want to go over some of the points you brought up. We have been in contact with Norfolk Southern. We had their attorney and a representative who works on their site locally here on Monday with the Town. At the end of last week we had received over a dozen complaints from people in your neighborhood, which we tried to respond to either by phone or by email or by return letter. We are very much aware of it. My concern is that the site is not at full operation yet, so I fear what's to come. We are working with them very diligently and requested that they have some of their top people in Washington D.C. come up and meet us. We have spoken with their project manager who lives right here in Mechanicville. I have spoken with the other Supervisor's in both Stillwater and Mechanicville, and they both have received similar complaints.

There is a Federal regulation that guides how loud the decibels can be off site, and that is 65 decibels. We have our town engineering firm set up to fly equipment up here next week and have people out there, on the site, during the evening hours when we are hearing is the majority of these complaints, to do the testing. That will be at the cost of the rail yard, not the town. They will look out for the town's best interest. Unfortunately we cannot supersede and make them be quieter than the Federal guideline requires, but in some initial research that we have done, 65 decibels is me standing 5 feet away from you and having normal conversation. The complaints that we are hearing is the TV's on, windows are closed, and it is certainly a lot farther than 5 feet away and you can't hear yourself talk let alone somebody else. So we are imagining that the level well exceeds these limits. We have started to put the steps in place to do this sooner rather than later, because we do understand it is a quality of life issue.

Wayne Allan asked; will that measurement be taken from the property line?

Supervisor Wormuth said that it would be taken from both the property line and from your site. The language written is very specific to where the decibels can be at certain levels, and the illumination of light can be, because that was another concern, especially in Stillwater, the Supervisor said that they are dealing with. We were concerned about you folks up on the ridge thinking that the all of the lights were going to rise, but that seems to be fairly mitigated. If anybody does find that to be an issue, please let us know as we want to get all of the information together a do it all in one shot. There are sound deadening devices that can be put in; there are barriers that can be used. We used them before behind the Lowe's project and the Mobile Home Community, to deaden some of the noise from the delivery trucks. I am not going to say that everybody found it to be perfect, but it certainly helped. We are very aware of the situation and are in daily conversations with them. We have asked not only asked them to come and meet with us, but to also meet with Counsel and have these studies done. Then we would set up a public meeting where you can come and speak directly to them. The Town will facilitate that.

Wayne Allan said that he has approached Mr. Becker and he indicated to me that an Environmental Assessment Form report was issued to the Town. I felt that their Environmental Assessment Form was weak; it was not properly done, that they made some assumptions, and other things that I think were erroneous, and giving

false representation as to how the project was going to impact. We know that there is nothing that can be done at this point.

We had two instances prior to them starting. One was explosives, that we were not made aware, that when they did go off it shook the house. They said in their Environmental Assessment Form, that they would not do any construction at night. Well that was far from the truth, because they did do construction at night. So, I just ask that the Council be cautious while they work with them and to please make it strong and solid. Sometimes what they say and what they do is not always accurate.

Supervisor Wormuth said that we are documenting everything that we can, in writing. If we need to build a case to make them be better neighbors than what they professed, we will. We do see this as a priority. Our Code Enforcement Officers will be down there tomorrow on site, and we will have the engineers out there next week, and I look forward to hearing Mr. Becker's response to my latest phone calls. I was actually hoping to hear back from him tonight before 7:00 because he knew we had a meeting.

Wayne Allan said that he had a conversation with him and he promised to get back to me and it has been 2 weeks.

Supervisor Wormuth said she spoke with him last Friday and we set up to meet with some of his local people on Monday, which we did. But I did expect to hear from him between Monday and now.

Jeanette Anglin, 11B Fairway Drive stated that she wished that the Supervisor were here 2 years ago when they started this project. All of these things that we are talking about now were major concerns that we had at that time. We were just brushed aside with "Everything will be just fine"

Supervisor Wormuth asked if that was at a Planning Board meeting?

Jeanette Anglin, Yes, there were several of them.

Supervisor Wormuth said that she was here, but I was just in the audience.

Jeanette Anglin, I sent a letter with some pictures and want to reiterate everything that has been said. In addition, it is ugly as hell back there now. We had a pretty view before, and while views are not the big issue. They also need to do something to pretty the place up a little. I have no trees and if I had tickets to the football game on Sunday where my house is, I would be in ecstasy. I just want to say there are other things other than the lights, the noise, and also the esthetics of the compound

Supervisor Wormuth said that they would take that into consideration when we meet with them to see if we can get them to address everything at once.

Tom Connolly, 8A Fairway Drive said that the railroad had the Town meeting and they also met with us at our townhouses. I think they sold us a bill of goods. The fact was that this wasn't going to be anything that was going to be annoying or loud. In fact, they when asked they actually said that it would be like the golf course, about the same amount of noise as on the golf course. I have never been on a golf course that noisy. I am a camper, and I can tell you that these campers that have the ability to have generators, the decibels are usually under 65. Some of the larger ones, maybe, but if they were any louder they would not be in the campgrounds very long. If they are saying it is at 65 decibels they really do not know what a decibel really is.

Supervisor Wormuth said that is the reason why we are going to have it tested by our independent engineers.

Tom Connolly, at my house, which is across the street, I can be upstairs and my dog gets irritated. The cracks in the road were not there before they dynamited. Now I think that all of drainage ditches from the townhouses, they split the roads. I think that the Town should have them pay for the roads also.

Supervisor Wormuth said that she would have the Highway Superintendent and the owner who holds current bonds on those roads look into that tomorrow morning.

Tom Connolly said that there are a lot of cracks that were not there before they dynamited. But anyway, they gave the indication that they were going to put in trees, so it would lower the noise level. There are no trees that I can see, or fences.

Supervisor Wormuth said that I do know that they met with you separately, much to Counsel's dismay as well as this Board's. We encouraged them to make it part of the public meeting and they chose not to. They are a private entity; there is nothing we can do to control them with setting up meetings with residents in our town. But we would have liked to have all of that on the record. We are aware of it and we did reiterate it through the minutes in the Planning Board and the Town Board. We will go back and speak to them specifically about that as well.

Tom Connolly said that this was before the town meeting with you folks. I will say that I have heard that they are required to have those types of meetings.

Supervisor Wormuth said that even through our learning of this process of the Federal Commerce and Transportation Act, by law they did not have to come before our town, our board because it was an existing railroad. They could have done what they wanted and said too bad, and we insisted that because the majority of it is in Halfmoon, even though you would have to drive through Mechanicville to get it, that one of the towns take lead agency on this. At least get in writing some of what is going to happen and what is going to be controlled for the protection of our residents. We have spent a lot of town time doing this, and will continue to do it until we get it to the point where we feel they are meeting the obligations that they promised everyone that they would.

Tom Connolly said that he appreciates it and knew that you would, but I hope that you will stick with it.

Keith Amato, 11A Fairway Drive, it was actually at my house that they came to. We invited them to our home and went to the meetings prior to the very public meeting, because we wanted more information about how it is going to affect our life. They did discuss that everything was going to be OK, which obviously it is not. One of the things with the sound level, I have been working with my phone apps and I show about 60 decibals on my deck and about 50 inside my house. I would ask if your study would like to come inside my house and do some of the test work there.

Supervisor Wormuth asked if he would please leave his information with the Clerk so she can contact you if the engineers are willing to do that.

DEPARTMENT REPORTS – month of January

1. Senior Express Dispatch – Total # Riders - 294 Total # Meals - 342
2. Town Justice Wormuth
Total # Cases – 341 Total Fees Submitted to Supervisor - \$37,160

CORRESPONDENCE

1. **Received** from the Town Planning Board Resolutions approving the following: Sign applications for Captain's Youth and Family Services located at 25 Fern Lane, for Sleepy's Mattress located at 1694-1696 Route 9, and for Falcon Trace PDD located Route 236.

Received & Filed

2. **Received** from the Town Planning Board Resolution of denial of a change of tenant with Commercial Site Plan application for the proposed Financial Office Building located at 139 Meyers Road

Received, Filed, & Print

3. **Received** a letter & pictures from Jeanette Anglin, a concerned resident about the noise and the appearance from the Intermodal.

Received, Filed, Print & Copy for the Board

4. **Received** from US Army Corps of Engineers, a letter stating their findings for the proposed Swatling Falls PDD.

Received & Filed

NEW BUSINESS

RESOLUTION NO. 41

Offered by Councilman Polak, seconded by Councilman Hotaling: Approved by the vote of the Board: Ayes: Wormuth, Polak, Hotaling, Wasielewski, Hayner

RESOLVED, that the Town Board approves and order paid all vouchers for all funds listed on Abstract dated February 01, 2012 totaling \$2,031,201.92.

RESOLUTION NO. 42

Offered by Councilman Wasielewski,, seconded by Councilman Hayner: Approved by the vote of the Board: Ayes: Wormuth, Polak, Hotaling, Wasielewski, Hayner

RESOLVED, that the Town Board approves the minutes of Town Board meeting of, January 18, 2012 as presented.

RESOLUTION NO. 43

Offered by Councilman Hotaling, seconded by Councilman Polak: Approved by the vote of the Board: Ayes: Wormuth, Polak, Hotaling, Wasielewski, Hayner

RESOLVED, that the Town Board accepts for dedication the roads associated with the Brookfield Place PDD – Phase II, as it satisfies the standard set by the Town roadway dedication procedure.

Supervisor Wormuth stated for the Board that there was a trailer parked on that roadway that the Highway Superintendent was concerned about. It was left over from construction and that has been removed, so he has signed off on this meeting the dedication procedure. There were discussions about that earlier in the week.

RESOLUTION NO. 44

Offered by Councilman Hotaling, seconded by Councilman Hayner: Approved by the vote of the Board: Ayes: Wormuth, Polak, Hotaling, Wasielewski, Hayner

RESOLVED, that the Town Board authorizes the Supervisor to enter into and execute a license agreement with WNYT-TV, LLC to utilize their facility located at 244 Bellview Road on Bald Mountain to facilitate communications for the water treatment facility, water storage tanks and the delivery systems, in the amount of \$415.00 per month from May 1, 2012 through April 30, 2014, \$423.00 per month from May 1, 2014 through April 30, 2016 and \$430.00 per month from May 1, 2016 through April 30, 2017 per the review and approval of the Town Attorney

WHEREAS, the Town of Halfmoon recognizes the importance of providing potable municipal water to the residents of the Town of Halfmoon; and

WHEREAS, the Town of Halfmoon recognizes the advancement in technology that have occurred to assist in the provision of potable water to the citizens of the Town of Halfmoon; and

WHEREAS, one of the most efficient and affordable manners to provide the citizens of the Town of Halfmoon with potable water is to utilize radio transmission antennas to permit the Town of Halfmoon to monitor the Town's water treatment facility, water storage tanks and delivery system remotely; and

WHEREAS, the Town of Halfmoon recognizes the need to place these antennas in an area that will provide accessibility to the water treatment facility, water storage tanks, and the delivery systems so as to provide a safe and efficient means of operating the system remotely; and

WHEREAS, WNYT-TV, LLC, a Delaware corporation operating 715 North Pearl Street, Albany, New York 12204, has a tower located at 244 Bellview Road that provides an optimum location for a radio antenna that will provide accessibility to the water treatment facility, water storage tanks, and the delivery systems for the Town of Halfmoon; and

WHEREAS, the Town of Halfmoon must enter into a license agreement with WNYT-TV, LLC to place the radio antenna on their property; now, therefore, be it

RESOLVED, that the Town Board of the Town of Halfmoon authorizes the Supervisor to enter into and execute the license agreement per the review and approval of the Town Attorney with WNYT-TV, LLC to utilize their facility on Bald Mountain to facilitate communications for the water treatment facility, water storage tanks and the delivery systems, in the amount of \$415.00 per month from May 1, 2012 through April 30, 2014, \$423.00 per month from May 1, 2014 through April 30, 2016 and \$430.00 per month from May 1, 2016 through April 30, 2017.

RESOLUTION NO. 45

Offered by Councilman Hayner, seconded by Councilwoman Parker: Approved by the vote of the Board: Ayes: Wormuth, Polak, Hotaling, Parker, Hayner

RESOLVED, that the Town Board authorizes the Town Supervisor to execute Water District Agreement for Howland Park Planned District Development permitting the expansion of the Halfmoon Consolidated Water District and to execute any other documentation that may be necessary to expand district and insure that the mandatory fees and infrastructure costs be paid, subject to the review and approval of the Town Attorney.

PUBLIC PRIVILEGE for non-agenda items

Mr. Allan, I noticed that the Town does not have a noise ordinance in effect. I believe that either the Planning Board or someone is looking into that. I hope that you seriously consider the adoption of a noise control ordinance with all the proper controls still giving the homeowners. I have looked at the National Noise Control Act. If the town does adopt a noise ordinance, there is the ability where the town can tell the railroad, it cannot operate between the hours of 10:00 pm – 6:00 am. There is some flexibility, but you cannot be more restrictive than the National Code Law.

Supervisor Wormuth said that we could certainly look at that. One of the things that we have run into in the past is the equipment needed in order to test it. As you heard in my earlier statement, we are having our engineers fly in equipment from a different state where they operate to do the testing. The local Sheriff's Department who enforces our laws as well as the Code Enforcement Office, who is allowed to enforce local laws, currently do not have that equipment, although we do have a grant writer and will continue to look for grants for equipment.

I will have the Town Attorney look into the issue of the hours of operation for the railroad. I think that there are some NEPA laws that prevent & prohibit us from that, but if there is a way we can do it we will try and find out how.

Attorney Murphy said that she will definitely look into it, and you are absolutely right, what we do with the other businesses in the town, the Planning Board, limits the hours of operations as opposed to a noise ordinance. It is much easier to enforce. It is much more clear. However, with the railroad, we are in a unique situation in that they have a lot of Federal protection. But I will pull that and look into it.

Mr. Allan said that he wanted them to know that he was a Deputy Town Supervisor in Long Island for 10 years we had a problem with night noise. We had a noise ordinance and the town purchased meters and the police department actually went out to address complaints and record the noise. They were able to take them to court and enforce the law. That curtailed the problem.

Supervisor Wormuth said that was a very good suggestion and that they would look into it.

Ted Jean 31A Fairway Drive, I was at the April 2009 meeting with the railroad company, and I did speak at the meeting. You could look at the minutes back then, I had stated that I would like to have the railroad not function during Sunday and the hours of 10:00 at night and 6:00 in the morning. This request for not operation between 10:00 at night and 6:00 in the morning has been around since 2009 when the railroad first started. I just wanted to point out that this is not something that just came up tonight; this was a request that I made in 2009.

Supervisor Wormuth said that again, we will look at it and revisit it and if there is anything that we can do, we will. My recollection of the discussion then was that we weren't allowed to prohibit it, so we didn't. We will go back and take a look at those minutes, and I am sure there are some notes from our Attorney as to why we reacted to it the way that we did. We will revisit it at a future meeting and report back on that.

Attorney Murphy said that at the time, we definitely were not allowed, we couldn't. The law may have changed, so we will absolutely look at seeing if there have been some modifications.

Ted Jean said; I just wanted to stand and say that this has been around for 3 years.

Attorney Murphy said that I was at the meetings and I absolutely recall that.

Supervisor Wormuth said Ted to please leave his name and number with the Clerk, I can personally follow up with you or you can just follow the minutes on line.

Deanna Stephenson 7 Cindy Lane, I just have 2 things, I just want to be clear on this, I had another conversation with Lynda about it. When the town and the Zoning Board people term limits were up at 2011, they came off. Now Lyn, am I correct to assume that when they came off, they wanted to stay on so, the Board said that they enjoyed the work that they had done so they stayed on. There is no putting them in a pool, there is no opening of that position to the public

Attorney Murphy said; you said 2 different things. There is no putting it into a pool; there is technically a vacancy, because if there were not a vacancy you would not have to appoint someone

Deanna Stephenson OK, there is no vacancy because they came off, you are all happy with them, so they go back on. Correct?

Attorney Murphy said; you are asking a lawyer, in a common vernacular, correct, but there is technically a vacancy otherwise there would be no point for the board to appoint someone. So, was there a vacancy? Yes. Did they reappoint people who were already doing a great job for the town? Yes.

Deanna Stephenson OK, so you had an Assessment Reviewer position come up that was public knowledge and people did apply. You have an Ethic's position, now how are these considered?

Attorney Murphy said; those people left.

Deanna Stephenson said; those people left, OK

Supervisor Wormuth stated that the Ethic's position is new, it is expanded. There is a vacancy because of the expansion made by the recommendation to go to a 5-person board.

Deanna Stephenson said; OK, all I would suggest and to take into consideration is that you have a pool of new people in Halfmoon that may want to be involved, so in the future you may want to open these up for other people to get involved.

The second thing is, it is common practice that all public comment at the end of these meetings are put into the minutes? Am I correct, or is it up to the discretion of the board?

Attorney Murphy, if you are asking, legally the minutes do not have to be verbatim

Deanna Stephenson said; it does not have to be verbatim. Is it your practice here, this board to put all public comment at the end of the minutes? I am noticing on the January 4th, the public comment, I know that 3 of us got up to speak, we did not have the public comment, whether something happened

Attorney Murphy, I could not answer

Deanna Stephenson said; I am not asking you specifically Lyn, I am just asking.

Attorney Murphy, In general, all public comments are not always at the end of the minutes, because we take public comments in the beginning of the meeting as well.

Deanna Stephenson said; for the agenda

Attorney Murphy, so the answer to that question is no. They do absolutely try to put on a summary of what everyone's comments were, and that is why the minutes are publicized for people to review.

Supervisor Wormuth stated that if you feel that something was left out of the January 4th meeting, we can certainly have Lynda go back and check her notes and her tapes and if we need to go back and amend those, we certainly happy to do so. Anytime that something occurs please feel free to bring it to our attention and we will be happy to look into it because there was no reason for it not to be there.

Deanna Stephenson said; thank you

There being no further business to discuss or resolve, on a motion by Councilman Polak and seconded by Councilman Hayner, the meeting was adjourned at 7:27 pm.

Respectfully Submitted,

Lynda A. Bryan
Town Clerk