

The October 2, 2007 regular meeting of the Town Board of the Town of Halfmoon was called to order by Supervisor Wormuth at 7:00 pm at the Town Hall on Harris Road with the following members present:

Mindy A. Wormuth, Supervisor  
Walter F. Polak, Councilman  
A James Bold, Councilman  
Regina C. Parker, Councilwoman  
Paul L. Hotaling, Councilman  
Mary J. Pearson, Town Clerk  
Lyn A. Murphy, Town Attorney

Also present: Frank Tironi, Director of Water; John Pingelski, Highway Working Supervisor; Laurie Sullivan, Deputy Town Clerk; Lisa Perry, Secretary to Supervisor; Pat Temple, Director of Finance.

The Town Board Workshop was held in the Board Room at 6:15 pm; No action was taken. The Supervisor led the Pledge of Allegiance and asked for a moment of silence for Councilwoman Parker's son, Taylor who passed away this week

#### REPORTS OF BOARD MEMBERS AND TOWN ATTORNEY

Councilman Hotaling reported that the dedication of the sign at the Water Treatment Plant recently took place and also, the Town has over 200 new customers this year. He stated Celebrations along with the youth program would have a movie at Hayner sports barn on October 14<sup>th</sup>.

Councilwoman Parker reported that the Seniors are having "Friends helping Friends" sponsored by Boscov's and on October 16<sup>th</sup> a ticket can be purchased at the Center for \$5.00 and get a 25% discount at Boscov's. She stated the senior center would be celebrating their 20<sup>th</sup> Anniversary on Saturday October 13<sup>th</sup> with a luncheon at 12 pm.

She stated she thanks everybody for their love and support during the recent time in her family and thanks everyone for helping them get through a very difficult time in their life.

Councilman Bold reported on the updates for the construction projects and stated the Dunsbach Road sewer project all the pipelines are in now and work has begun on the pump station. He stated we are under deadlines with the grants and it is proceeding very well.

He reported on the new Town Hall stating many of the interior rooms have the finished coat of paint on them and some of the corridors; the ceiling light fixtures are in and there is power in the building; ceilings are going in; tiles in the bathroom. He stated they are getting ready to pave in a few days and the pavers in the plaza are all in; the grass is growing and has been mowed twice.

He reported there are some add and subtract change orders from Malone & Tate for wood trim work in some of the interior corridors in the amount of \$1,369; repaint some steel beams; painting in the mechanical room; tactile handicap pavers; extended gypsum board; mechanical room changes.

Supervisor Wormuth stated she would report on the Tentative Budget when they get to it on the agenda.

The Supervisor opened public privilege for discussion of agenda topics; no had questions or comments.

#### DEPARTMENT REPORTS – month of August

##### Building

Total Permits - 114  
Total fees remitted to the Supervisor - \$61,535.00  
Filed.

##### Fire Code

Total permits - 21  
Total fees remitted to the Supervisor- \$912.00  
Filed.

#### Month of September

##### 1. Town Justice Tollisen

Total cases - 280  
Total fees remitted to the Supervisor - \$28,305  
Filed.

##### 2. Town Justice Wormuth

Total cases - 326  
Total fees remitted to the Supervisor - \$29,560.60  
Filed.

CORRESPONDENCE

1. Pursuant to Town Law, the 2008 Tentative Town Budget submitted to the Town Board on September 28<sup>th</sup>.

Supervisor Wormuth reported on some highlights of the Budget stating the Town Board continues to maintain financial stability and solid budget management and conservative fiscal policies are the foundation for the financial stability. She stated there will be no Town General Tax for the 29<sup>th</sup> consecutive year and no Town Highway Tax for the 23<sup>rd</sup> consecutive year. She stated the overall operating Budget for 2008 totals \$13,709,916 and the overall increase is just 2.83% more than the 2007 Budget. She stated she credits each department and the Town Board for continued cooperation in keeping this spending plan affordable.

2. Received from Saratoga County Planning Board notification of review and approval, with no significant county wide or inter community impact, for the Grace Fellowship Church PDD Amendment, Route 146, Halfmoon Industrial Park.

3. Received from State of New York Department of State notification of receipt and filing of Local Law No. 5-2007, Hayner PDD Amendment.

4. Received Narrative and Site Plan for PDD amendment for 11 Solar Drive, Parkford PDD, for Architectural Glass & Mirror

5. Received letters from ten families residing in the Dater Woods/Christopher Glenn neighborhood requesting that the current 30 mph speed limit be lowered in the interest of the safety of the numerous children residing in this area.

Supervisor Wormuth stated she would ask the Town Attorney to comment and the actions the Town has available. She stated she has received several phone calls with concerns regarding the speed limit.

Attorney Murphy stated pursuant to the New York Vehicle and Traffic Law the Town Board’s power to modify speed limits on Town roads doesn’t exist and they have to go through a process where they request DOT that would make change. She stated it is more complicated to go to 25 mph reduction. She stated the Board has asked for this road to be studies in the past and the Town has been told they are not willing to reduce the speed any lower. She stated the Town Board is prohibited to taking any action on our own that is not in accordance with the speed limit set by the State.

Councilwoman Parker suggested we ask for additional coverage by the Sheriff to patrol more.

Supervisor Wormuth asked if the Town could send a request again pursuant to other development in the area.

RESOLUTION NO. 270

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

RESOVLED, that the Town Board requests that the State of New York Department of Transportation and the County of Saratoga Department of Public Works conduct a speed limit study in the Dater Woods/ Christopher Glen development in the Town of Halfmoon.

NEW BUSINESS

RESOLUTION NO. 271

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

RESOLVED, that the Town Board approves and orders paid all vouchers for all funds listed on Abstract dated October 2, 2007, totaling:

RESOLUTION NO. 272

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

RESOLVED, that the Town Board authorizes the Supervisor to make the following Budget Transfer between Appropriations:

Transfers Between Appropriations:

From Account	To Account	Amount	Reason
10-5-1990.40	10-5-8160.10	\$6,000	Additional appropriations needed to cover payroll

Contingency	Transfer Station Personal Services		for Fall clean up and thru year end
10-5-1990.40 Contingency	10-5-1680.40 Data Processing Contractual	\$4,203	Additional appropriations needed to cover software maintenance for 2007-2008
10-5-1990.40 Contingency	10-5-1440.40 Engineering Contractual	\$25,000	Additional appropriations needed to cover expenses thru year end
30-5-1620.40 Buildings Contractual	30-5-8320.41 Source of Supply, Power & Pumping Contractual Electrical	\$5,000	Transfer of appropriations within own budget to cover expenses for electrical
30-5-8320.20 Source of Supply, Power & Pumping Equipment	30-5-8320.41 Source of Supply, Power & Pumping Contractual Electrical	\$25,000	Transfer of appropriations within own budget to cover expenses for electrical

Attorney Murphy stated, relative to the next item, that this doesn’t service the entire property and limits it to an existing garage that they use for maintenance purposes. She stated if the Sand & Gravel Company ceased their operations and the property developed they are still outside the district for that purpose. Councilman Bold stated they would be paying 1½ times the normal water rate and also pay EDU’s on that building. Supervisor Wormuth stated she is assuming this business is paying for all the necessary lines and extensions at no cost to the Town.

Attorney Murphy stated they are responsible all the lines in subject to the review and approval of the Water Department.

RESOLUTION NO. 273

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

RESOLVED, that the Town Board authorizes entering into Out of District Water Agreement between the Town and Halfmoon Water Consolidated Water District and Carver Sand & Gravel, LLC authorizing the extension of the Consolidated Water District for property at 49 Button Road.

**OUT OF DISTRICT WATER AGREEMENT**

**THIS AGREEMENT**, made the 2 day of October 2007, by and between **THE TOWN OF HALFMOON and HALFMOON WATER CONSOLIDATED WATER DISTRICT**, with offices located at Halfmoon Town Hall, 111 Route 236, Halfmoon, New York 12065, hereinafter referred to as the "SELLER", and **CARVER SAND & GRAVEL, LLC**, with offices located at 494 Western Turnpike, Altamont, New York, 12009, hereinafter referred to as "PURCHASER". Pursuant to a resolution adopted by the Town Board of the Town of Halfmoon on the 2 day of October, 2007 authorizing the extension of the Consolidated Water District pursuant to and in accordance with execution of this agreement, it is hereby agreed as follows:

**SECTION I**  
**WATER SERVICES.** The SELLER shall supply, during the term of this Agreement, to the PURCHASER, water of the same quality as supplied residents of the Halfmoon Consolidated Water District to be delivered by the SELLER to a lateral line provided by the PURCHASER located at a location as determined by the SELLER to service PURCHASER'S property designated as 49 Button Road, in the Town of Halfmoon, Saratoga County, New York said service only and exclusively for the PURCHASER’S property being tax map number 280-2-50, but only such properties that are located at 49 Button Road and are utilized for the Gravel Business Garage.

**SECTION II**  
**TERM OF AGREEMENT.** The contract shall be deemed effective as of the date of execution and shall continue for a period of ten (10) years from the date that water is first supplied to PURCHASER with an additional option to PURCHASER to renew the term for an additional ten (10) year period, except that the SELLER shall have the right to suspend water services upon a sixty (60) day written notice, if it is determined by the SELLER that the existing Halfmoon Consolidated Water District water supply is insufficient to meet the needs of the Halfmoon Consolidated Water District, such suspension only to last so long as necessary and so long as said supply is insufficient. Notwithstanding anything herein to the contrary, the PURCHASER'S water service will be suspended only if, and only to the extent that, the water services to all other properties similarly affected within the boundaries of Halfmoon Consolidated Water District are also suspended. The Purchaser, Carver Sand and Gravel, LLC, agrees to be incorporated in Halfmoon Consolidated Water District, or an extension thereof, when directed by the Town of Halfmoon at PURCHASER'S sole cost and expense. All the necessary legal work, engineering, surveying, posting and publication shall be at PURCHASER'S sole cost and expense. Upon approval of any extension to Halfmoon Consolidated Water District or creation of a new district, which would include the subject premises within the boundaries of such extension or district, this Agreement shall terminate. At all times the rules and regulations of Halfmoon Consolidated Water District shall apply to PURCHASER'S property. All payments made by PURCHASER to SELLER pursuant to this Agreement or subsequent to this Agreement, shall be kept by the Town and no refund of any amount will be made and no payment may be made under protest. Specifically, all payments required under Paragraph VI shall be made and the agreement to pay reserve capacity is a condition precedent to SELLER entering into this Agreement and the payment obligation will survive creation of a new district or extension of a district servicing PURCHASER’S property and/or termination of this Agreement.

**SECTION III**  
**RATE OF PAYMENT.** PURCHASER shall pay to the SELLER for water consumed an amount currently established at \$4.21 per thousand gallons of water used, together with purchaser's applicable Operation and

Maintenance Charge and Debt Retirement, determined as if the property was within Halfmoon Consolidated Water District Zone 3. It is acknowledged between the parties that the rate charged to the PURCHASER shall increase in the sole and absolute discretion and in amounts and on terms as directed by the Town Board of the Town of Halfmoon; provided, however, that the rate for water consumed shall not exceed one and one-half (1 ½) times the rate charged to persons or entities located inside the boundaries of Halfmoon Consolidated Water District. PURCHASER shall pay SELLER for Debt Retirement based upon Equivalent Domestic Units, the Town's method of assessment (or the then current method of assessment for payment of debt retirement) in the Consolidated Water District for Town of Halfmoon Consolidated Water District Zone 3, as if the property were included in Halfmoon Consolidated Water District Zone 3 for debt service, until an extension to the Halfmoon Consolidated Water District, including the subject premises, or a new district is formed, at which time the water rates and debt retirement provisions of such extended district shall be applicable. Purchaser shall also pay for reserve capacity as set forth in Section VI hereof.

#### **SECTION IV**

**RESERVING RIGHT.** The SELLER reserves the right to increase the rate for water consumed herein specified as circumstances warrant and the SELLER determines, upon Thirty (30) days notice to the PURCHASER.

#### **SECTION V**

**PAYMENT.** Payment shall be made as required in Section III and for reserve capacity as provided for in Section VI, pursuant to the SELLER'S direction and/or as set forth in the rules and regulations for Halfmoon Consolidated Water District, but in no event less than quarterly for water consumed, or as said schedule is established by the Town Board of the Town of Halfmoon. In the event the payments are not received on the due dates, the SELLER reserves the right to terminate service upon Thirty (30) days written notice by certified mail, return receipt requested to PURCHASER at the address designated in this Agreement. These charges shall be paid as billed and if unpaid for Thirty (30) days, SELLER shall have the right to enforce collection by such means as are deemed reasonable to SELLER, together with a Ten Percent (10%) late payment penalty on the past due amount. PURCHASER shall pay all SELLERS expenses including costs, disbursements, interest at the highest legal rate permissible and attorney's fees incurred by SELLER or charged for collection or attempted collection. SELLER may, in its sole and absolute discretion, add the amounts due to the next real property tax bill to be included thereon in addition to the assessed taxes and any special assessments, to be subject to tax sale as if a part of the tax assessment. This obligation shall be and become a lien upon the real estate of the PURCHASER and anyone to whom PURCHASER has sold the property and shall be collected as a delinquent tax bill with all the rights and responsibilities applicable for the collection of delinquent taxes. PURCHASER hereby agrees and consents to permit said charges to be added to and become part of the real property tax bill or to be collected by direct action on contract, whichever the Town of Halfmoon Town Board, in its discretion, directs.

#### **SECTION VI**

**INSTALLATION AND REPAIRS.** PURCHASER shall be responsible for all costs incurred in the installation of the pipes, mains, laterals and all related construction inspection costs to Town specifications. All contracts entered into by the PURCHASER involving construction on property owned by or to be dedicated to the SELLER shall be subject to SELLER'S review and approval. No construction on SELLER owned property, to which said property reasonable access shall be granted, shall be commenced without SELLER'S prior approval, which approval shall not be unreasonably withheld. Any contracts involving construction on property of the Town by the PURCHASER shall include a provision whereby the contractor shall maintain a separate policy of liability insurance naming the SELLER as an insured in an amount acceptable to the SELLER. The SELLER shall not be liable for any part of the costs of work, labor, materials for the construction, installation or maintenance of any pipes, mains, meters, or structures whatsoever employed by the PURCHASER in obtaining water and in the distribution thereof. PURCHASER agrees that no pumping equipment or pumping units shall be installed which shall reduce the static water pressure of Halfmoon Consolidated Water District from its present pressure or which are not in accordance with Town specifications and requirements.

#### **SECTION VII**

**MAINTENANCE.** PURCHASER shall be responsible for all repairs and maintenance of the water system from the mains to PURCHASER'S property. Repairs due to accidents, leaks, breaks or any other cause attributed to PURCHASER, their agents, servants, employees, vendees, or assignees on property of PURCHASER will be effectuated within a reasonable time by the PURCHASER after the occurrence and if on SELLER'S property, reasonable access to the area shall be granted for PURCHASER to effect necessary repairs to Town Standards. In the event the repairs are not done within a reasonable and timely manner, the Halfmoon Consolidated Water District shall have the right to effectuate all necessary repairs and to charge the PURCHASER for the costs incurred by the Halfmoon Consolidated Water District. If not paid within Thirty (30) days of invoice the charges shall be added to the next due water bill with a Ten Percent (10%) penalty or will be subject to direct suit for collection. Pending payment, no further Building Permits or Certificates of Occupancy may be issued. Any contracts entered into by the PURCHASER for any repairs to lines, mains or equipment on SELLER owned property shall be subject to SELLER review and approval. Any contracts entered into by the PURCHASER for repairs on property owned by the SELLER shall meet minimum liability insurance requirements promulgated by the SELLER which shall include a provision whereby the contractor shall maintain a separate policy of liability insurance naming the SELLER as an additional insured in amounts acceptable to the SELLER. The SELLER shall provide to said insurance supplier the policy requirements regarding amounts of coverages.

#### **SECTION VIII**

**LIABILITY.** The Halfmoon Consolidated Water District shall use reasonable diligence to provide a regular, uninterrupted supply of water, but in case the same shall be interrupted, irregular, insufficient, defective or shall fail in whole or in part or is curtailed by reason of executive or administrative orders issued at any time or by federal commissions or state board of federal bodies having jurisdiction; or in case the service shall be interrupted or be insufficient to be effective or shall fail in whole or in part by reason of acts of God or making changes in or repairs to the SELLER'S equipment, mains, lines, treatment plant or other properties or in case the service shall be interrupted or become insufficient to be effective, become shut off or fail in whole or in part by reason of flood, fire, strikes, labor troubles, legal process, federal, state or county interference, or by acts of God or by reason of any other cause, the SELLER shall not thereby in any of the above mentioned instances become guilty of any default, but shall be bound in good faith to resume service as soon as practicable. The SELLER will make every effort to give reasonable notice of the discontinuance, but nothing herein contained will obligate the SELLER to give notice to the PURCHASER of any temporary discontinuance of such supply resulting from the alteration or repairs to the SELLER'S water mains, or parts thereof. The SELLER will not be liable for any injury, casualties, loss or damage resulting from any supply or lack of supply of water or use of said water.

**SECTION IX**  
**INDEMNIFICATION.** The PURCHASER agrees to indemnify and hold harmless the SELLER from any and all costs, damages, claims, demands, expenses arising out of any alleged breach by any person or persons or any damage to property allegedly occasioned by or resulting from the existence of any default or negligence of the SELLER or the failure of the SELLER to provide water properly to any entity that obtains water from PURCHASER or for any failure whatsoever unless occasioned by SELLER'S gross negligence, to the fullest extent permitted by law.

**SECTION X**  
**INSURANCE.** PURCHASER shall maintain a liability insurance policy naming the SELLER as an additional insured for SELLER'S liability relating to the providing of water services and water supply. The policy shall specifically cover the SELLER for property damage protection and personal injury protection in an amount not less than One Million Dollars, for damages sustained as a result of the non-existence, termination, poor quality or stoppage of water. It shall also provide that the SELLER shall be entitled to Thirty (30) days notice of cancellation. Said notice to be sent to the SELLER at 111 Route 236, Halfmoon, New York 12065.

**SECTION XI**  
**USE OF WATER SERVICES.** The sale of water is to be limited to PURCHASER's property, being the garage associated with the business known as Carver Sand and Gravel located on tax map number 280-2-50 only and no water may be sold or delivered by PURCHASER outside PURCHASER'S existing property at 49 Button Road, limited to the Gravel Business Garage, without the express written consent, on terms and conditions acceptable to and in the sole and absolute discretion of, Halfmoon Consolidated Water District. PURCHASER shall not extend or use the water services beyond what is actually necessary to service the proposed Gravel Business Garage, located at 49 Button Road in the Town of Halfmoon, Saratoga County, New York, being PURCHASER'S property, being tax map number 280-2-50. In no event shall water services be provided to any other buildings, persons, entities or properties without prior written approval of the SELLER, which approval Seller may in their sole discretion deny or withhold. PURCHASER shall not knowingly provide such services to any other persons or entities without written permission of the SELLER. If water is so provided without SELLER'S consent, this contract shall be voidable at the SELLER'S election and all payments made shall be retained by the Town of Halfmoon. If any person or entities shall, without permission, obtain such services, the PURCHASERS shall terminate such service immediately.

**SECTION XII**  
**ASSIGNMENT OF CONTRACT.** There shall be no sale or assignment of this contract, or any rights contained herein, without the prior written consent of the SELLER. It shall not be a violation of this provision on assignment if PURCHASER, assigns their right to one builder or purchaser of the residences in the subdivision. PURCHASER however remains responsible for payment of all obligations set forth herein.

**SECTION XIII**  
**COMPLIANCE WITH LAWS.** This contract is made and accepted by the PURCHASER subject to the provisions and laws of the State of New York as if the same were fully set forth herein.

**SECTION XIV**  
**NOTICES.** Unless otherwise provided herein, notice to the PURCHASER may be given to PURCHASER'S address set forth above, and notice to the SELLER may be given to the Town Board, Town of Halfmoon, 111 Route 236, Halfmoon, New York 12065.

**SECTION XV**  
**DISTRICT.** PURCHASER understands that the PURCHASER'S premises may be included or incorporated in the existing Halfmoon Consolidated Water District or its equivalent or an extension thereof. In either event, PURCHASER expresses its willingness and desire that the Gravel Garage located at 49 Button Road in the Town of Halfmoon, Saratoga County, New York, being tax map number 280-2-50, be incorporated or included in such a district, an extension thereof or its equivalent at PURCHASER'S sole cost and expense and on terms and conditions acceptable to SELLER at no cost to SELLER and at such time as directed by SELLER. PURCHASER shall petition the Town Board, if and when an it is requested by the SELLER and make the required application to New York State Department of Environmental Conservation and New York State Department of Health.

**IN WITNESS WHEREOF**, the parties have set their hands and seals on this 2 day of October, 2007.

Councilman Bold stated, relative to the next item, these are three very large display cases that will be inside the lobby and will be built into recesses already there and the interior lighting will be included.

RESOLUTION NO. 274

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

RESOLVED, that the Town Board approves Change Order No. 11, Contract No. 1 Malone & Tate Builders, Inc., for New Town Hall, to install three Display Cases in the additional amount of \$35,345.

Councilman Bold stated, relative to the next item, that as they prepared to blend the new pavement with the old pavement they found the old pavement is in poor condition in this area and found an appropriate place to saw cut it both in the rear area and the front. He stated there would be additional topsoil with credits and additional charges

RESOLUTION NO. 275

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

RESOLVED, that the Town Board approves Change Order No.12, Contract No. 1, Malone & Tate Builders, Inc., for New Town Hall parking lot rework in the amount of \$13,064.

Councilman Bold stated, relative to the next item, that the Clough Harbour engineers have been working on the detail design for the trail improvements under the Champlain Canal grant improvements.

RESOLUTION NO. 276

Offered by Councilman Bold, seconded by Councilman Hotaling, Adopted by vote of the Board: Ayes: Wormuth, Bold, Parker, Hotaling Abstain: Polak Carried.

RESOLVED, that the Town Board authorizes Clough Harbour & Associates to go out to bid for the Champlain Canal Trail project.

The Supervisor opened public privilege for discussion of non-agenda items.

Bruce Tanski stated he would like to invite the Town Board, Planning Board, Water Department and any interested people that there will be an open house at Halfmoon Heritage on October 11, 2007 from 11am –3pm for a tour of the building and for refreshments.

There being no further business to discuss or resolve the meeting was adjourned at 7:20 pm.

Respectfully submitted,

Mary J. Pearson, Town Clerk