

**TOWN OF BRUNSWICK  
REGULAR TOWN BOARD MEETING  
JUNE 10, 2010, 7:00 P.M.  
TOWN HALL**

**Board Members Present:** Supervisor Herrington, Councilman Poletto, Councilman Salvi, Councilman Casale and Councilman Sullivan.

**Board Members Absent:** None.

**Also Present:** Town Attorney, Thomas Cioffi, and Town Clerk, Susan Quest-Sherman.

Supervisor Herrington called the meeting to order at 7:05 p.m.

All joined in with the salute to the flag.

Supervisor Herrington made a brief statement mentioning that a notice of violation was served on the Gallivan Corporation. It requires the Oakwood Properties LLC remedy all violations to the zoning ordinance and provides for 60 days to achieve compliance. A SEQRA determination is on the agenda tonight.

**VISITORS WHO WISH TO SPEAK:**

Ms. Terresa Bakner, Whiteman Osterman & Hanna LLP, representing the Gallivan Companies, read a letter which was submitted to the Town. The Gallivans are good neighbors. These are family businesses employing 85 people. The Gallivans are reaching out to the neighbors to address issues and have instituted best management practices on the advice of their consultants. They are looking at limiting idling time of trucks reducing backup noise by backing in the vehicles in the evening, limiting the grinder to 7 a.m. to 7 p.m. Monday through Friday, 7 a.m. to 3 p.m. on Saturday and 7 a.m. to 3 p.m. on the occasional Sunday. Work should be on the leeward side of the piles. Odor assessment is being done.

Mr. Sean Gallivan, stated that the Corporation is looking into all the concerns which have been voiced.

Mr. Brendan Gallivan invited everyone to the site to show how they are operating.

Mr. Donald Zee, attorney for 24 households in the Town of Brunswick, was concerned an agenda had not been posted on the website. The Public was told at the last Public Hearing that this topic would not be addressed again until the end of June and would be noticed to property owners. Mr. Zee has a problem with 60 days given to the applicant to come into compliance. This brings the process through the summer months. Mr. Zee showed the Board maps delineating the original site plan. He quoted the Planning Board Minutes of April 18, 2002 which stated that the Gallivans were to return if noise became a problem. He showed aerial photographs showing the expansion of the operation which is in violation. The operation has been in violation for over six years. Mr. Zee quoted the Town Code and estimated that a fine could be \$14,150 and 141 & 1/2 years in prison. The Town of Clifton Park has imposed fines on violators.

Mr. Zee would like the Board and the Code Enforcement Officer to reconsider the 60 days given for compliance. Mr. Zee doesn't think that the Town should still consider the PDD application. The land has been destroyed and there has been no storm water management. Mr. Zee questioned the tests performed and what the operation was doing on the day of the tests. He would like a 1000 foot buffer and correction of the problems before anything is considered. He feels that the Gallivans knowingly violated the zoning ordinance.

Supervisor Herrington explained that the neighbors have told him that they are not anti business, and that if the Board issues a Pos Dec a full environmental analysis will be performed.

Mr. Jim Tkacik, wanted to know about the site plan.

Mr. Gilchrist explained that the notice of violation is based on the Site Plan issued in 2002. The properties subsequently purchased have no Site Plan so must come into compliance with the existing zoning.

Ms. Bakner stated that 60 days is a short time to change a business and they are still evaluating the notice of violation which was received earlier in the day. She couldn't relocate her law firm in 60 days.

Mr. Zee again stated since they are evaluating their response to the notice of violation this time frame has given them an opportunity to continue their bad behavior. Heavy Equipment can be moved fairly quickly.

Mr. Leo O'Dell, Ledgewood Dr., asked what will continue for the 60 days. Is it the operation on the original 5 acres or the remaining 70 acres?

Mr. Cioffi explained that the Gallivans have 60 days to come into compliance but there might be litigation.

Mr. Mike Shongar, Lindsay Dr., explained that the neighbors felt that they needed to hire an attorney. He would like the operation to be limited to certain hours.

Mr. Ron Brosnihan, 14 Northstar Dr., agreed with Mr. O'Dell and asked if the notice of violation had anything to do with the additional sites.

Mr. Gilchrist stated that the notice of violation was against all three parcels owned by Oakwood Properties.

Mr. Brosnihan objects to the 60 days to come into compliance. The letter submitted by the Gallivans was great but 8 years to late. He wants his summers back.

Mr. O'Dell asked what the Board expected the Gallivans to do. The Gallivans have a record of not complying.

Councilman Poletto stated that he expects the Company to operate on their original 5.4 acre site plan and the remaining two parcels comply with Schools & Cemeteries and Agriculture zoning.

Mrs. Maureen Sullivan, Northstar Dr., asked why the violation was just served today when they have been in violation for 3 and 4 years.

Mr. Tom Meyers, Northstar Dr., wanted to thank Phil for making an improvement by asking for a full environmental impact and issuing a notice of violation but the neighbors have a lot of pent up frustration. It has taken so long and it doesn't seem enough. The PDD should not be considered until some remediation is done.

Mr. Gilchrist stated that there is an application in front of the Board.

Mr. Donald Zee stated that the Board can make a motion to not entertain the application because it is a legislative act.

Ms. Bakner, Attorney for the Gallivans, stated that there is an application in good faith before the Town Board. The Board is considering declaring a Positive Declaration and has previously declared itself Lead Agent. The Draft Environmental Impact Statement will not be completed within the next 60 days. It would be impossible, the procedures are substantial. If the Board denies the PDD tonight there would be grounds for a law suit in her opinion.

Mr. Harry Efstathiadis, Hickory Ct., believes that the Gallivans have 3 or 4 diesel engines of 350 horse power. In the application the applicant has stated that they have a crusher which is 700 horse power which he could operate on site for 29 days take it away and bring them back for another 29 days. Mr. Efstathiadis would like to see Mr. Gallivan's business plan and would like to know who will be policing the operation.

Ms. Bakner explained that DEC has been to the site and found the site to be in compliance and no rock crushers are operated at the site. The crusher is on site for maintenance only.

Mr. Don Maurer, Stone Arabia Dr., believes that the PDD process should be frozen at this point. For 8 years the Gallivans have not shown any good faith.

Ms. Despina Brosnihan, North Star Dr., stated that if the Gallivans can't come into compliance in the 60 days or fights the notice of violation then the Board should deny the PDD application. She read a letter to point out the personal aspects of the situation. She opposes the PDD application on the grounds of the stench, and noise level. She is asking the Town Board to take action.

Mr. Dan Dewine, Stone Arabia Dr., would like the Town to take sides and uphold the laws of the Town.

Supervisor Herrington stated that the Town is not afraid of law suits but doesn't like spending the money. All the facts have to be out before a vote can be taken.

Mr. Don Maurer, Stone Arabia Dr., asked if the Record misquoted Supervisor Herrington when he said that the Town could not afford another law suit. He had the impression that the Town was going to roll over on this application.

Supervisor Herrington stated that the Town is in good financial shape and is not afraid to go to court.

Mrs. Beth Randall, Oakwood Ave., stated that this was not about law suits but about dignity, respect, kindness, caring and neighbors. Her Councilman John Brown has visited her home and witnessed the noise. She asked what the violations were and how long the Gallivans had to address them. Trucks wake her a 5 a.m. She would like the PDD put on hold until a complete environmental study is done. She would like to know the chain of the deed.

Mr. Tom Meyers, Northstar Dr., asked for a more expedient action on the PDD.

Councilman Salvi wants the audience to know that a PDD is never a done deal. All phases must play out before a decision can be made. Before voting he has read every PDD application and voted on the merits. There can be no preconceived notions.

Councilman Poletto would like the process sped up. This has been going for three summers now which is not fair to the residents. The Town is going through the process and making a record for the Town to defend itself.

Councilman Casale would like to put a hold on the PDD process until the operation gets into compliance. He also would like the deadline to be 30 days for compliance.

Councilman Sullivan has visited the site and the North Forty neighborhood. He has witnessed the noise and odor. He has concern for the residents and the employees. He thinks 60 days is a reasonable amount of time.

Mr. Dan Dewine, Stone Arabia Dr., doesn't understand the Board rewarding the Gallivans. Nothing has changed.

Mr. Mike Shongar asked if he was going to get answers to the questions he submitted at the Public Hearing and when the application will be complete.

Mrs. Kathy Croson, Stone Arabia Dr., stated she had to fight the Ross Valve project in the 90's. She built her current home which backed a cemetery. She would like the Board to take into consideration the effect of the operation on the residents and 60 days ruins another summer.

Mr. Matt Doran, Lindsay Dr., was home on April 26<sup>th</sup> and thought a helicopter was flying over his house. The noise was emanating from the Oakwood Property. He wondered if the Gallivans were crushing construction debris.

Mr. Sean Gallivan, SM Gallivan, assured the audience that no crushing is done on site.

Mr. Harry Efstathiadis, Hickory Ct., is concerned that if processed wood is mulched it could contain arsenic and carcinogens which could become air borne.

Mr. Sean Gallivan, explained that no construction debris is brought to the site.

Mr. Ron Brosnihan asked if all the questions posed at the Public Hearing had to be answered.

Mr. Gilchrist stated that all questions will be addressed.

Mr. Brosnihan asked what is meant by an Empire Zone.

Mr. Cioffi stated that the County designates Empire Zones.

Mr. Donald Zee mentioned that in the application it is stated that brick and concrete and asphalt is reprocessed. He would like to know how it is reprocessed. He is concerned that the Town had to agree to the Empire Zone designation.

Mr. Sean Gallivan stated that there is no reprocessing at the site.

Mrs. Vickie Ouimet, Bellview Rd., asked if the Town has had a chance to evaluate the ditch in front of her house. Her son has been in the ditch three times in the past week. She is concerned for her disabled son. She would like the rocks removed.

Councilman Salvi went up to the site with Mr. Eddy. The road is extremely steep the rocks are to slow rain water. Piping is not an option there is a lot of shale. A Storm Water Abatement District could be formed and financed by the neighbors.

Mr. Kestner explained a drainage district. The cost would be heavy.

Mrs. Ouimet stated that there is piping above her and below her but she has rocks. She would like piping up to the shale.

Mr. Eddy explained that the rocks are used to slow the flow of water. He has removed some loose rocks. If the rocks are removed there is a possibility that a large storm will erode her driveway.

Supervisor Herrington had instructed Mr. Eddy to remove some of the rocks. He suggested to Mrs. Ouimet that she may want to install a fence.

Mrs. Ouimet stated a fence would not help as her son would just climb it.

Mrs. Beth Randall asked Mr. Gallivan what is making the noise at the site. She also asked where the fill came from.

**BUSINESS MEETING:**

**MINUTES OF THE PREVIOUS MEETING:**

Councilman Salvi made a motion to accept the Minutes of the previous meeting, seconded by Councilman Poletto. Approved.

**REPORTS:**

Town Clerk: Susan Quest-Sherman

The Town Clerk submitted a written report for the month of May. A check for \$9,897.03 will be remitted to the Supervisor's Office. A motion to accept the Town Clerk's Report was made by Councilman Poletto, seconded by Councilman Salvi. Approved. A copy of the report is on file in the Town Clerk's Office.

Highway Report: Doug Eddy

Mr. Eddy read his report for the month of May. Motion to accept the report was made by Supervisor Herrington seconded by Councilman Casale. Approved. A copy of the report is on file in the Town Clerk's Office.

Water & Sewer Report: Doug Eddy

Mr. Eddy read his report for the month of May. Motion to accept the report was made by Councilman Salvi, seconded by Councilman Poletto. Approved. A copy of the report is on file in the Town Clerk's Office.

Supervisor Herrington thanked Mr. Eddy and Mr. Dougherty for overcoming the water department deficit.

Councilman Poletto mentioned that the meter reading will soon be automated which will save on man hours.

Superintendent of Utilities & Inspection: John Krieger

Mr. Krieger presented his report for the month of May \$6,561.00 will be remitted to the Supervisor's Office. Motion to accept Mr. Krieger's report was made by Councilman Poletto, seconded by Councilman Salvi. Approved. A copy of the report is on file in the Town Clerk's Office.

Town Attorney: Thomas Cioffi

Mr. Cioffi gave his report for the month of May. Aside from routine matters Mr. Cioffi has continued to work with other Town Officials on the turnover of the Wal-Mart Pump Station. He has also been working on the water supply contract and some tax assessment issues. He has also worked with the Town Comptroller on new reporting requirements. Motion to accept Mr. Cioffi's report was made by Councilman Salvi, seconded by Councilman Poletto. Approved.

Town Historian: Sharon Zankel

Mrs. Zankel presented her report for the month of May. Motion to accept the report was made by Councilman Casale and seconded by Councilman Sullivan. Approved. A copy of the written report is on file in the Town Clerk's Office.

Recycling Coordinator: Thomas Engster

Mr. Engster was absent but had submitted a written report. A copy of the report is on file in the Town Clerk's Office.

Brunswick Community Library: Julie Zelman

Ms. Zelman was absent but had submitted a written report. A copy of the report is on file in the Town Clerk's Office.

Family Community Center: Bill DeFilippis

Mr. DeFilippis was absent but had submitted a written report. A copy of the written report is on file in the Town Clerk's Office.

Supervisor Herrington made a motion to accept the Recycling, Community Library and Family Community Center reports, seconded by Councilman Poletto. Approved.

### **RESOLUTIONS:**

**Resolution No. 44** Resolution Fixing and Establishing Compensation of Town Employee. The foregoing Resolution offered by Councilman Salvi and seconded by Councilman Sullivan was duly put to a roll call vote as follows: Councilman Salvi, Voting Aye; Councilman Casale, Voting Aye; Councilman Sullivan, Voting Aye; Councilman Poletto, Voting Aye; Supervisor Herrington, Voting Aye. The foregoing Resolution was thereupon declared duly adopted.

**Resolution No. 45** Resolution Amending Town of Brunswick Employee Handbook. The foregoing Resolution offered by Supervisor Herrington and seconded by Councilman Poletto was duly put to a roll call vote as follows: Councilman Salvi, Voting Aye; Councilman Casale, Voting Aye; Councilman Sullivan, Voting Aye; Councilman Poletto, Voting Aye; Supervisor Herrington, Voting Aye. The foregoing Resolution was thereupon declared duly adopted.

**Resolution No. 46** Resolution Accepting Proposal for Professional Engineering Services.

This is in connection with the Grant for Solar Panels.

The foregoing Resolution offered by Councilman Casale and seconded by Councilman Sullivan was duly put to a roll call vote as follows: Councilman Salvi, Voting Aye; Councilman Poletto, Voting Aye; Councilman Sullivan, Voting Aye; Councilman Poletto,

Voting Aye; Supervisor Herrington, Voting Aye. The foregoing Resolution was thereupon declared duly adopted.

**Resolution No. 47** Resolution Approving Adoption of Positive Declaration Pursuant to State Environmental Quality Review Act for Oakwood Property Management, LLC Planned Development District Application. The foregoing Resolution offered by Supervisor Herrington, and seconded by Councilman Sullivan was put to a roll call vote as follows: Councilman Salvi, Voting Aye; Councilman Casale, Voting No; Councilman Sullivan, Voting Aye; Councilman Poletto, Voting Aye; Supervisor Herrington, Voting Aye. The foregoing Resolution was thereupon declared duly adopted.

Mr. Gilchrist stated that since the Board has issued a Positive Declaration the Public Hearing should remain open but the meeting scheduled for June 30<sup>th</sup> should be canceled until the DEIS is submitted and deemed complete.

Councilman Poletto asked if the Board can require a time schedule for the submission of the Draft Scope.

Councilman Poletto made a motion that the Town Board expects the applicant, Oakwood Property Management LLC, to submit the Draft Scope by June 24, 2010. The motion was seconded by Councilman Salvi and put to a roll call vote as follows: Councilman Salvi, Voting Aye; Councilman Casale, Voting No; Councilman Sullivan, Voting Aye; Councilman Poletto, Voting Aye; Supervisor Herrington, Voting Aye. The foregoing motion was approved.

Councilman Poletto asked what the next step would be in the process.

Mr. Gilchrist stated that after the Draft Scope is submitted and deemed complete it will be made available to the Public for their comments.

**CORRESPONDENCE:**

A letter was received by Mr. Eddy thanking him for the loan of the paver by the Rensselaer County Highway Department.

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

None.

**WARRANTS:** Warrants No. 100608 through 100611, No. 5281001 through 5281013, No. 100612 through 100736, and No. 6111001 through 6111011 were presented. Councilman Poletto made a motion to approve the warrants seconded by Councilman Salvi. Approved.

**FURTHER COMMENTS BY VISITORS:**

Mr. Donald Zee asked if his office could receive a copy of the Scoping Document. He would like the narrative revised with the new submittal. The environmental impacts should be based upon the original condition of the properties.

**ADJOURNMENT:**

Councilman Poletto made a motion to adjourn the meeting, seconded by Councilman Salvi. Approved. The meeting adjourned at 9:45 p.m.

Respectfully submitted,

Susan Quest-Sherman  
Town Clerk

Note: An audio compact disc of this meeting is available in the Town Clerk's Office.