

January 8, 2004

A meeting of the Village of Horseheads Board of Trustees was held on the above date at 7:00 p.m. Present were Mayor Patricia Gross, Trustees Earle Catlin, Ronald Swartz, Howard Miller, and Kevin Sullivan, Village Manager Vincent Azzarelli, Village Attorney John Groff, Clerk-Treasurer Sharron Cunningham, Police Chief Dave Kole, PBA President Sgt. Mike Barton, Officers Jamie Burgess, David Ruhmel and David Murray, Director of Public Works Chris Lawrick, Planning Board Chairman Bob Skebey, Planning Board Members Mike Stenpeck and Denis Kingsley, and Manager's Assistant Rachel Johnson. Also present were: Bernie Weigle, 111 Boorum Pl.; Ray and Lorie Cass, 22 Redwing Lane; Joe and Janet Ruhmel, 318 Gardner Road; Kim Schutrum, Lenox Ave.; Tess Banfield, Catalpa Drive; Roxanne Mark; Penny & George Kastenhuber, 519 John St.; Donald Zeigler, 535 Watkins Road; Ken Sedgwick, 301 William Lane; Eileen Patocka, 3136 Watkins Rd.; Barb Skorczewski, President of Merchants Assoc.

At this time, Chief Kole presented Officers Burgess, Ruhmel and Murray with commendations. Officer Ruhmel was reporting to a suspicious person by Dunkin Donuts. He located the suspects and interviewed them. In his good judgment and interview skills, he realized something was up, possibly drugs in the car. Officer Murray responded also. They got them to admit drugs were in the car. Then they requested Officer Burgess and the police dog Aron. They searched the car and found 25 packs of heroin, needles, etc. Mayor Gross thanked them for their fine work.

Resolution by Trustee Miller, seconded by Trustee Swartz

BE IT RESOLVED, that the reading of the minutes of the Board of Trustees Meeting of December 11, 2003 be dispensed with and the same stand approved as entered by the Clerk.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Sullivan, seconded by Trustee Catlin

BE IT RESOLVED, that the audit of bills as listed below be received and approved for payment when in funds:

General - \$117,948.86
Water - \$31,922.79
Trust & Agency - \$2,959.10

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Swartz, seconded by Trustee Miller

BE IT RESOLVED, that the Justice Reports for December, 2003 be received and placed on file in the Village Clerk's Office.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Sullivan, seconded by Trustee Catlin

BE IT RESOLVED, that the minutes of the Planning Board Meetings of December 29, 2003 and January 5, 2004 be received and placed on file in the Village Clerk's Office.

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Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

At this time, Atty. Groff declared open a Public Hearing on a Proposed Local Law on Festivals and Parades. As nobody came forward, Atty. Groff declared the public hearing closed.

Resolution by Trustee Sullivan, seconded by Trustee Catlin

WHEREAS, the Village is considering a local law Establishing Regulations for Festivals and Parades, and

WHEREAS, this proposed law was presented to this Board on December 5, 2003 and notice of a public hearing regarding this matter was published in the official newspaper of the Village and a public hearing regarding same was held on this date, and

WHEREAS, the Village Board of Trustees has given this matter due consideration.

NOW THEREFORE BE IT RESOLVED, that said Proposed Local Law Establishing Regulations for Festivals and Parades is hereby adopted and the Village Clerk-Treasurer is directed to file same with the Secretary of State as required by law.

Trustee Swartz - I gave a copy to the Merchants Association, I don't think they've had an opportunity to see it yet.

Barb Skorzewski - I didn't have that much time to review it today. I ask that you keep in mind that we have worked hard to create an environment for groups to have more events to improve the quality of life for its residents.

Mayor Gross - In some of the regulations, I feel its discouraging events in the Village. The group in Corning tells us we have to be more than a community. Are we saying to these people that we don't really want these events. Some of these are very unclear to me. Section 6, Exemptions - religious services and school functions - couple of other things I'm very concerned about - Section 9, G, unobstructed lane for emergency traffic. My interpretation is that it should be clearer. We need to talk about this as a group. I was thinking that if we take 10' out of Hanover Square, that would be very dangerous. The intention of this was that there would be nothing in the center - we could move people to the side. But that is not what its stating. How is someone going to interpret that in a few years.

Village Manager Azzarelli - we need access for emergency vehicles.

Trustee Sullivan - so if we block off a street, we have to make sure 10' down the middle, or just not put booths there.

Mayor Gross - that is not what this is saying.

Trustee Swartz - I suggest we have a workshop that includes the merchants and the Legion, etc., and also the Hist. Society and bring out all these issues that are in here.

Mayor Gross - I agree. The Legion needs to be involved. They have to project the number of people carrying banners, etc.

Motion by Trustee Swartz, seconded by Trustee Miller, that this matter be tabled.

Atty. Groff - if you haven't tabled to a specific date, it automatically comes up on the next agenda.

Discussion ensued. It was agreed to have one month to work on it, and to table until February 12th.

Motion by Trustee Swartz, seconded by Trustee Miller, that this matter be tabled until the February 12, 2004 Board Meeting.

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Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

At this time, Atty. Groff declared open a public hearing regarding a Proposed Local Law in Fire Insurance Proceeds. As nobody came forward, Atty. Groff declared the public hearing closed.

Resolution by Trustee Sullivan, seconded by Trustee Swartz

WHEREAS, the Village is considering a local law relative to Fire Insurance Proceeds, and

WHEREAS, this proposed law was presented to this Board on December 5, 2003 and notice of a public hearing regarding this matter was published in the official newspaper of the Village and a public hearing regarding same was held on this date, and

WHEREAS, the Village Board of Trustees has given this matter due consideration.

NOW THEREFORE BE IT RESOLVED, that said Proposed Local Law Relative to Fire Insurance Proceeds is hereby adopted and the Village Clerk-Treasurer is directed to file same with the Secretary of State as required by law.

Atty. Groff - you should note that this does not apply to one or two family dwellings. Just multi-family and commercial only. That is what the state legislators decided. I don't know of any rationale for it, perhaps they felt the failure to correct damaged single family homes was less burdensome on the community than larger properties. Its not there because we are suggesting it shouldn't apply to them, its because the State law does not allow it.

Mayor Gross - We don't set any particular dates. Do we give them a year from the date?

Atty. Groff - should an incident occur its incumbent upon the owner to come before the Village, make a proposal regarding the property. If Village staff feels the proposal is good, and the time frame is appropriate, then the release of proceeds would be approved usually in a staged manner or installment manner to allow them to proceed with repairs or remediation. No dictate as to the time frame. This law places discretion on the Village staff to negotiate agreement with property owner.

Mayor Gross - because this is new to the Village, would the Code Enf. Officer approach the owner first.

Atty. Groff - our first step would be to notify the Supt. of Insurance. Before the insurance co. can release the proceeds, they have to contact the Supt. of Insurance. Then they would find a levy against the proceeds. That forces the property owner to contact the Village. But it would be good practice to inform the owner that there is this process and that the sooner they prepare themselves for it the better.

Mayor Gross - would it be appropriate to list those who are to contact the owner - Code Enf. Officer, Police Chief, Village Manager, etc.

Atty. Groff - We can modify the law as such. It seems that the first people to consider for this would be Code Enf. Officer and perhaps the Village Manager. From a fire loss perspective the Fire Department's involvement ends after the fire is out. Code Enforcement already has the responsibility of oversight regarding damaged properties. Already within his jurisdiction. Village Manager would be appropriate as a backup I guess.

All agreed to add this to the law.

Atty. Groff - this is already routine behavior for Code Enforcement Officer. If you feel its necessary to specify in the law, we can do that.

Mayor Gross - My concern is in 20 years will people know what we meant.

Atty. Groff - we will need to have a 2nd public hearing and amend the law. Item 9 should be removed from the agenda.

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Motion by Trustee Miller, seconded by Trustee Swartz, that Item #9 be removed from the agenda.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Item #10 is also tabled until the next meeting.

Atty. Groff - the Village Code provides for a Board of Ethics. That law requires appointment of 3 people to the Board of Ethics. It is incumbent upon us to fill this board. These would be initial appointments. No stated term of office. I believe you have received a recommendation from the manager on candidates.

Village Manager Azzarelli - all have agreed to accept these appointments

Resolution by Trustee Swartz, seconded by Trustee Catlin

WHEREAS, Chapter 23 of the Village Code establishes a Code of Ethics for the Village of Horseheads, and a three-member Board of Ethics, and

WHEREAS, the members of such Board are to be appointed by the Board of Trustees and serve at the latter's pleasure, and

WHEREAS, this Board has received recommendations regarding individuals to be appointed as members of such Board.

NOW THEREFORE BE IT RESOLVED, that Village Manager Vincent Azzarelli, Patricia Pautz, and Thomas O'Mara are hereby appointed as the members of the Board of Ethics. Such membership to take effect immediately, and to continue until a member's resignation, withdrawal, or removal.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Discussion on Time Warner Franchise Agreement - Atty. Groff stated that the Village has an agreement with Time Warner, and have had discussions regarding their compliance with the terms of this agreement. Met with managing director of TW, last November. Brought our concerns to other staff at TW over a year prior to that. We were unsatisfied with their response to our concerns. At the meeting in November we received a very positive response. Our concerns were heard. The concerns we had in part were billing procedures, making sure payments were made in accordance with the contract, our payments had been intermittent and irregular. Since then we have been receiving monthly payments per the contract. We also question the amounts also because it lacked backup supporting documentation. We told them we wanted more information with the payments. We also discussed having cable service in the form of roadrunner brought to two buildings for Village staff that don't have email yet - the DPW garage and the Youth Bureau. They are evaluating this. As this request got processed, the other people who came involved seem to not understand our concerns. We have now started to aggressively reiterate our concerns. We are now more adamantly demanding attention to the issues we raised. I expect we will continue to receive a positive response. Our agreement contains a provision called ' favored nation language'. This means that if any municipality within the Time Warner distribution area receives a contract benefit which is better than ours, we have the right to demand that we get similar treatment. We are trying to use this in our agreement to receive the same benefits they are giving to other municipalities in Chemung County. I hope that by the next Board meeting we'll come to you with more progress.

Trustee Sullivan - is the franchise fee being imposed by other towns.

Atty. Groff - every community in Chemung County receives a franchise fee.

Trustee Sullivan - Are they structured like ours.

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Atty. Groff - some do, but depends on when they were negotiated. Town of Horseheads has 3%, Big Flats has 3%. Ours is 5%. It's a 10-year franchise agreements, expires in 2008.

Lorie Cass, 22 Redwing Lane - discussed at length the billing concerns she has experienced with Time Warner, specifically their 'fee-on-fee' that appears on the monthly bill.

Atty. Groff explained that the agreement provides for 5% on gross revenues received by TW on services to businesses and residents. When they calculate it, this franchise fee itself then becomes part of their revenues, creating a fee on fee. The law defines gross revenue to include the franchise fee, the effect is that the cost turns out to be 5% on top of the 5%. Each community has their own definition of what the calculation is.

Discussion ensued.

Resolution by Trustee Miller, seconded by Trustee Catlin

BE IT RESOLVED, that on Village Election Day, March 16, 2004, the polls will be open between the hours of 12:00 Noon and 9:00 p.m. at Horseheads Village Hall, 202 S. Main Street, Horseheads, NY.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Miller, seconded by Trustee Catlin

WHEREAS, Police Chief David Kole was permanently appointed Chief of the Village of Horseheads Police Department on or about June 6, 2002 at an annual salary of \$53,000, and

WHEREAS, his predecessor Chief R. Craig Banfield's salary at the time of retirement was \$59,657, and

WHEREAS, GML Section 207-m provides in pertinent part that in Police Departments, whenever the base salary or other compensation of the permanent full time police officer who is the highest ranking subordinate to the head of the Police Department is increased, the salary and compensation of the permanent full time head of the Police Department (Chief) shall be increased at least the same amount, and

WHEREAS, the Office of the NYS Comptroller has issued advisory opinions concluding that when an individual is appointed to fill a vacancy in the office of the full time head of the Police Department, such individual is entitled to salary at least equal to the that of his predecessor, and

WHEREAS, it is become apparent that Chief Kole neither received the salary of his immediate predecessor, nor has he received the salary and other compensation adjustments necessary to assure that his salary and compensation stay apace with the increases and salary for the highest subordinate police officer, and

WHEREAS, it has been determined that for the period of June 6, 2002 through May 31, 2003, Chief Kole is entitled to an adjustment in pay in the amount of \$6,657, and for the period June 1, 2003 to December 31, 2003, he is entitled to an adjustment in salary and compensation of \$4,279 for a total of \$10,936.00, and

WHEREAS, it has further been determined that in accordance with GML Section 207-m and decisions and opinions rendered thereunder, Chief Kole's annual salary should be the sum of \$61,927 through May 31, 2004, and based upon the report and recommendation of Village Manager Vincent Azzarelli.

NOW THEREFORE BE IT RESOLVED, that Village Manager Azzarelli, Clerk-Treasurer Cunningham and other appropriate Village personnel are authorized and directed to appropriate the sum of \$10,936.00 and further directed to pay said sum to Chief David Kole in full compensation of what had heretofore been inadvertently unpaid, and be it further

RESOLVED, that these funds are to be paid to him by January 31, 2004 in full satisfaction of the

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benefits afforded to him under GML Section 207-m, and be it further

RESOLVED, that appropriate Village staff are authorized and directed to make any warranted adjustments to Chief Kole's retirement plan benefits with all deliberate speed.

Mayor Gross - I have a concern, but this does not reflect on the current Chief. This is an unfunded mandate by New York State. We have no say in it. It could reach a point where we can't afford our Police Department. But I would like this Board to work with some other villages and communities on some of these mandates. How much can this Village afford. We want to provide the services but it will very difficult for us to continue at this level. It has a lot to do with the state legislators with some of these mandates. I would like this Board to meet regarding these unfunded mandates. For every 1% we raise the taxes, that gets us another \$7,000.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Motion by Trustee Miller, seconded by Trustee Sullivan, that items regarding Discussion and Possible Action on Settlement of Property Damage Claim, and Set Public Hearing on Relocation of James W. Sewall Co. Into Empire Zone be added to the agenda.

Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Swartz, seconded by Trustee Catlin

WHEREAS, on December 14, 2003 the Village of Horseheads Department of Public Works was engaged in removing snow from Village streets as a result of then-existing weather conditions, and

WHEREAS, a piece of Village road equipment operated by a Village employee was involved in a property damage accident at the corner of Pine Street and Fletcher Street while engaged in snow removal activities, and

WHEREAS, investigation determined that the accident caused damage to a vehicle owned and operated by Jerry A. Smith, Jr. through no fault of Mr. Smith, and

WHEREAS, an independent estimate of the damage to the vehicle has been received establishing same at \$3,442.63 exclusive of taxes, and

WHEREAS, as Mr. Smith will incur costs in the amount of \$100.00 during the course of repair of his damaged vehicle for total out-of-pocket damages in the amount of \$3,542.63, and

WHEREAS, investigation has determined that settlement of this claim directly with the injured party rather than utilization of the Village's insurance coverages is advisable as it is most cost effective.

NOW THEREFORE BE IT RESOLVED, that this Board does hereby appropriate the sum of \$3542.63 for the settlement of the above-noted property damage claim. Village Manager Azzarelli and Clerk-Treasurer Cunningham are authorized and directed to establish the necessary funds and to expend same in settlement of the claim upon receipt of a full general release from Mr. Smith for all personal injury and property damages. Said release to be in a form approved by Village Attorney Groff.

Trustee Swartz - in the past the Village has had accidents over the years and turned them into insurance. Why is this one more cost effective for us to just pay.

Village Manager Azzarelli - What it would mean to our rating, and possible cost increases to our premiums. Cheaper to just pay it.

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Roll Call Vote:

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Resolution by Trustee Swartz, seconded by Trustee Catlin

BE IT RESOLVED, that the Village of Horseheads will conduct a public hearing pursuant to GML Section 959(a)(iii) to solicit comments regarding the relocation of The James W. Sewall Company into an Empire Zone. Said public hearing to be held on Thursday, January 22, 2004, at 7:05 p.m.

Mayor Gross:	Aye
Trustee Catlin:	Aye
Trustee Swartz:	Aye
Trustee Miller:	Aye
Trustee Sullivan:	Aye

Village Manager Azzarelli reported on the following items:

- Fire Dept. physicals - this is covered by the by-laws. Doesn't have any impact on it.
- Hope to have the budget draft by the next board meeting. Board members are asked to bring their calendars to the next meeting to set up a budget workshop.
- Received a letter from the Barringtons concerning their CDBG loan. Atty. Groff has sent them a letter requesting information. Should have that by the next Board meeting.
- Review of goals and objectives for last year. Will be presenting those in February.
- Had a visit from representatives of the Cinderella Softball. Requesting a building in the park on Gardner road, and an allocation of \$30,000 to help with the building. I will present this in the budget workshop.

Trustee Swartz - congratulated officers on their commendations. Fine example of how our police department works, and under the leadership of our chief.

Trustee Catlin - without these officers we'd be lost. Any given day they would have to put their life on the line for us. We have a wonderful department. This doesn't happen by accident. We all owe a lot of credit to Police Chief Dave Kole.

Trustee Miller - I have driven with an officer. Found out what it was like. They really do a fantastic job.

Trustee Sullivan - congratulated officers and Chief Kole.

Chief Kole - thanked the BOT for letting us do the presentation to the officers.

Tess Banfield - On the election on March 16, 2004. We've always had it here at the Village Hall for the caucus. That is the republican caucus. We have no idea how many people are coming, but I do feel that our party chairman should be informed ahead of time of who is running and who is not running so we can make arrangements. Last year we got the american legion hall. We don't have any money. Tom sweet had to pay \$200. I don't feel I have to pay the \$30 to put the notice in the paper. These candidates need to realize that we have a chairman that is impartial. I do want them to know you have two trustees up for election, and one village justice, and nobody has informed our chairman as to who is running and who is not running. I do feel that is important.

Mayor Gross - This is nothing for this Board to discuss, but its something the party should address. Maybe chairpersons need to discuss that. That burden lays on the party. All we do is call the paper and tell them what offices are open.

Clerk-Treasurer Cunningham - The Village has nothing to do with the caucus. We don't notify the paper or anything. That is up to the party. Only thing I do is come and notarize the caucus results. That's it. As far as anything to do with the caucus, the Village isn't responsible for letting anybody know who is running.

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Roxanne Mark - Ridge Road around the school is 20mph, but the signs are too small. So many little signs along the road - weight limit, drug signs, etc. Only sign that says 15mph is way before the school right at the last house. I spoke with a police officer. It would be better if the signs were posted better. Should be something directly in front of the school. Coming the other way toward the Village the only sign is on the Middle Road side, most people don't even notice it because it's a bad intersection. I'm asking that the Village look at this matter. I'm also going to ask the same of the Town of Horseheads.

Mayor Gross - we'll refer this to the Traffic Commission.

George Kastenhuber - It would be nice to look at laws for public hearings. How can we comment when we don't know what's going on. You should put copies out for public to see.

Mrs. Ruhmel, 318 Gardner Road - I don't know how we could NOT afford a police department. I'd be more than happy to pay more taxes if it meant keeping our police department.

Mayor Gross - I agree, but with senior citizens who are on a fixed income, we have an older population. One of the things we are working with is the STAR program. They just lowered the rate at which people can go in. People are starting to feel the crunch.

As there was nothing further to bring before the Board, the meeting was adjourned.

Respectfully submitted,

Sharron Cunningham
Clerk-Treasurer

/rmj