

August 12, 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, Howard Miller, and Ronald Swartz, Village Manager Vincent Azzarelli, Village Attorney John Groff, Clerk-Treasurer Sharron Cunningham, Planning Bd. Chairman Bob Skebey, DPW Chris Lawrick, Police Chief Davie Kole, Code Enforcement Officer Don Coats, and Manager's Assistant Rachel Johnson. Also present were: Norman Brewer, 167 Catalpa Dr.; Jim Gibson, 210 Fairfax St.; Glenn Banfield, 416 Shelbourne St.; Donna Rilyer, 417 Gardner Rd.; Tina Brown, 40 Becky Lane, Erin; Jack Wagner, 418 Shelbourne St.; Marsha and Rodney Brewer, 184 Catalpa Dr.; Dave Radin, 501 S. Main St.; Beverly Stevens, 213 Fairfax St.; Michael Wheet, 212 Fairfax St.; Tess Banfield, 134 Catalpa Dr.; Bernie Weigle, 111 Boorum Pl.; Larry & JoEllen Clark, 107 Orchard St.; Mike Stenpeck, 2202 Grand Central Ave.; Addie Kelley, 115 Myers Dr.; Paul Houck, 205 Fairfax St.; Chris Jones, 183 Catalpa Dr.; Ray Zeigler, 417 Shelbourne St.

Resolution by Trustee Miller, seconded by Trustee Catlin

BE IT RESOLVED, that the reading of the minutes of the Board of Trustees Meeting of July 8, 2004 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

Resolution by Trustee Swartz, seconded by Trustee Miller

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

General -	\$153,136.19
Water -	\$ 40,314.91
Trust & Agency -	\$ 2,959.10

Roll Call Vote:

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

Resolution by Trustee Swartz, seconded by Trustee Catlin

BE IT RESOLVED, that the Justice Reports for July 2004 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

Resolution by Trustee Miller, seconded by Trustee Swartz

BE IT RESOLVED, that the minutes of the Zoning Board of Appeals Meeting of July 7, 2004 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

August 12, 2004 (cont'd)

Resolution by Trustee Swartz, seconded by Trustee Catlin

BE IT RESOLVED, that the minutes of the Planning Board Meeting of July 27, 2004 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

At this time, Atty. Groff declared open a Public Hearing on Proposed Local Law Amending Definition of 'Professional Office'.

Ray Zeigler - what is the change.

Atty .Groff - We expanded to define real estate and insurance sales as it relates to the overlay zone.

As nobody else came forward, Atty. Groff declared the public hearing closed.

At this time, the Board reviewed and completed Part 2 of the Short Form SEQR regarding this proposed local law, finding there to be no negative environmental impacts and authorizing a Negative Declaration.

Resolution by Trustee Swartz, seconded by Trustee Miller

WHEREAS, the Village is considering a local law to amend Section 245-2 of the Village Code, specifically the definition of "Professional Office" to include insurance and real estate brokers, and

WHEREAS, this proposed local law was presented to this Board on June 25, 2004, 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 August 12, 2004, and

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

NOW THEREFORE BE IT RESOLVED, that said Local Law Amending Section 245-2 of the Village Code, specifically the definition of Professional Office is hereby adopted and the Village Clerk-Treasurer is directed to file same with the Secretary of State as required by law.

Roll Call Vote:

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

Resolution by Trustee Miller, seconded by Trustee Catlin

WHEREAS, on April 22, 2004 a Tax Warrant directing the Village Clerk-Treasurer to receive and collect taxes in the amount of \$1,026,266 was adopted, and

WHEREAS, an administrative error occurred at the Town of Horseheads Assessor's Office in that a parcel's veteran exemption was omitted from the tax roll, said parcel ID# 59.09-2-14, resulting in a difference of \$36.54.

NOW THEREFORE BE IT RESOLVED, that the Village Tax Roll for 2004-2005 is hereby amended to \$1,026,229.46.

Roll Call Vote:

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

August 12, 2004 (cont'd)

Resolution by Trustee Swartz, seconded by Trustee Catlin

BE IT RESOLVED, that this Board hereby approves the one-year probationary appointments of Myles Baker, Jr., 815 South Avenue, and Jeffrey Divincenzo, 122 Berkley Lane, to the Village of Horseheads Fire Department.

Roll Call Vote:

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

Discussion on Proposal for Purchase of Village Property on Ithaca Road - Village Manager Azzarelli said we received an offer from Bob Watts, who owns the U-Store it on Ithaca Road, to purchase a strip of Village land adjoining his property. The Village owns right-of-way next to his property, gives us access to one of our wells. He wants to purchase it. I've discussed this with the Village Attorney and the Director of Pub. Works and we'd like a little more time to research before we present fully at next meeting. There is a packet in your folders concerning this.

Trustee Miller - I motion to table.

Mayor Gross - need more info on how it effects the water system, approaches, etc.

Mr. Watts - We've been there 16 years and never seen a Village vehicle go over the land. We have permission from the Village to mow it and plow snow onto it. Would be easier if we just owned it.

Mayor Gross - will you construct on it.

Mr. Watts - not now. Maybe down the road. Just for snow removal and place to put snow. Our facility is large and we need to get snow out of there.

Trustee Swartz - I Second motion to table.

Roll Call Vote:

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

Resolution by Trustee Miller, seconded by Trustee Swartz

BE IT RESOLVED, that a 1997 Ford Expedition Police Vehicle (VIN#1FMFU18LXVLB37418) is hereby declared surplus, and the Village Manager is hereby authorized and directed to dispose of same by sale or as scrap, if same has no value.

Mayor Gross - which vehicle is this?

Village Manager Azzarelli -It's the old K-9 vehicle. This is first in a number that we will be bringing up for surplus.

Mayor Gross - you have a possible buyer for this?

Village Manager - yes.

Roll Call Vote:

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

Discussion on Oil and Gas Lease - *TABLED FROM 7/8/04* - Village Manager Azzarelli said this was a discussion that came up from a request from a drilling company. Questions on how it would effect the well. Our Atty. was not available for workshop. So we tabled it at the last meeting.

August 12, 2004 (cont'd)

Trustee Swartz - Who proposed this?

Atty. Groff - an oil and gas company has requested this. The document that they presented was a document that is a surface rights lease. That means that should you sign it you authorize them to go on property, drill on property, could have put road through, pipe lines, electrical, etc. Use property in a multitude of fashions to extract gas or minerals. Should there be gas, then in the future it would allow them to store gas on the property. They purchase gas cheap and store it in the empty cavern. Like a gas tank. The document that they prepared was a very pro-developer. Gave them many privileges. Paid the Village nominal amount for rental. Provided that we would receive a royalty if gas was found 1/8 of gross proceed. I negotiated with this company and other ones to find out if other gas companies were also interested. By doing so we tripled the offer, with bonus payments. Revenue we might derive would come from rental of property, other would be if they actually found gas. After shopping around, we negotiated the terms of the lease. Makes it more land owner friendly. First thing we did was to turn it from developmental lease to non-developmental, which means they can't go on property whatsoever, unless you say so. Only thing they can do is put a well on someone else's property near your property and remove gas from someone else's well. In addition to that, there are restrictions as to how they market the gas. We put in language to prohibit some things, gives us access to records, etc.

Discussion ensued. Atty. Groff continued - This is a better lease than originally because of my negotiations. The entire aquifer is bigger than our property. Aquifer is not greatly protected because it could be contaminated someplace else. Drilling is 10,000 feet down. Our water well is 70 feet deep. They are going a lot deeper, but have to go through aquifer to get down there. Their gas well is cased, lined with pipes. it is a DEC controlled process. They are obviously concerned with your water supply and the potential damage to it caused by drilling. It is now a judgment call. You don't have to lease.

Trustee Swartz - how big is the area they want

Atty. Groff - they've tried to lease all of the county....they are trying to lease up everything, but not interested in small parcels.

Trustee Swartz - I am very concerned about contaminating water well. But sounds like that could happen even if its not on our property.

Atty. Groff - our lease provides that they are responsible for that. Even if they contaminate from another source.

Mayor Gross - how often do we use this water well.

Chris - its our primary well. 1.7 million gallons of water per day come out of it.

Mayor Gross - what if that is contaminated.

Chris - could develop another well, but that would cost several million dollars.

Atty. Groff - if that source is contaminated, its not like the contamination stays where it is.

Chris - Well # 4 is next to Well #5, its 2,000 feet to the south of well 5. All on the same aquifer. Very reliable aquifer, one of the best around.

Trustee Swartz - is there a time limit on making this decision.

Atty. Groff - No. Not that has been expressed to me.

Trustee Swartz - I'd like to table for one more meeting. Would like to see lease figures, and have a workshop.

Mayor Gross - Let's table until second meeting in September.

Trustee Catlin - I originally thought what a great deal this could be, but just this week I talked to someone in Colorado with a drilling company, asked questions. He scared me. Consequences are great. I'd hate to think of it. Cracking the drill does happen.

August 12, 2004 (cont'd)

Roll Call to table:

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

Resolution by Trustee Miller, seconded by Trustee Swartz

WHEREAS, it has become known that certain real property which may be of interest to the Village of Horseheads for its various departments may be available for acquisition.

NOW THEREFORE BE IT RESOLVED, that the Village Manager is authorized and directed to develop a feasibility plan for the acquisition and use of such property.

BE IT FURTHER RESOLVED, that the Village Manager is authorized and directed to enter into negotiations for the acquisition and to take such other steps and measures as the Village Manager deems appropriate for determination of the need, uses and means of acquisition of the property, including but not limited to environmental reviews, demolition/renovation reviews, costs of relocation, etc.

Roll Call Vote:

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

Discussion on Draft Amendment to Zoning Re: Landscaping and Signs for Special Use Permits and Site Plan Review - Atty. Groff said we are just presenting for Board's review. Does not address signage, only landscaping. Please give me input. Could be presented to Planning Board and report back to you. Then it would be put in a form of a local law.

Mayor Gross - please take a look at this and in September we can move it along.

Village Manager Azzarelli - how about getting comments back by the first meeting in September.

Atty. Groff - what about signage?

Manager Azzarelli - I was approached by Plan. Bd. members who requested review of sign ordinance. Will be on their next agenda.

Village Manager Azzarelli reported on the following items:

- Research on forms we had used previously for recording complaint issues...will work to redesign this form and have a better tracking system...write down policies to go along with this.
- Reviewing the police fleet of vehicles...been able to work pretty good deals for cars.
- Working on new street sweeper under shared services. Should be delivered in September. Ours is barely usable.
- Weather is effecting us a lot. Need to backfill curbing in street dept.

Trustee Swartz commented on the following:

- Compliment Police Chief on cars with new decals...new look and colors, looks great. How about generator.

Chris - its here. Have installed all underground wiring for it already. Need to pour pad and install propane tank. Installed within the next week or two. Could run the generator for 3 days.

Mayor Gross - We approached state on what equipment we could use for linear park. I understand that because they aren't doing it, that equipment would not be available to us. So can we please

August 12, 2004 (cont'd)

approach Winner and Kuhl for monies to purchase this equipment. Do we have a list.

Manager Azzarelli - Chris is working on this. We plan on asking for money.

Mayor Gross - Also a real problem down there with flooding when it rains, is the state working on this.

Chris - I talked to state. Talked to Bergmann to approach contractor to come up with plan on alleviating it. We'll see what happens.

Mayor Gross - Regarding Time Warner - We've had concerns expressed by residents. Franchise fee up 15 cents.

Manager Azzarelli - We have a call into Dave Whalen. When I reviewed the contract again, ours is unique. Our fees are not only cable fees, but also advertising fees, etc., we get a percentage from all that. One of the residents claims Whalen said we have decided to bill customers for all that.

Trustee Swartz - I had a resident tell me that Time Warner said the Village initiated this.

Manager Azzarelli - the Village signed a franchise agreement in 1997. It's a ten year contract. 5% of the total revenue to include cable, advertising, pay channels, and so whats happened is we've talked to time warner to make sure we're getting everything we're owed. So they decided to take this right from the customer, that is another revenue added into the mix. So they are simply charging the customer for the franchise fee.

Atty. Groff - our franchise fee is what is called fee on fee. Law defines it as not calculated strictly on revenue. Also on Roadrunner, advertising, etc.. Law allows municipality to charge franchise fee on all revenue sources. This may be simply a line item where before they had bundled all this together, and basically the fee being paid was being paid on all the revenues as opposed to advertising. The law says that the cable company has to collect this additional revenue from the subscriber. They add the franchise fee back in and calculated as revenue. Actually getting a fee on top of a fee.

Tess Banfield, 134 Catalpa Drive read a letter to the Board regarding the recent carport issue in her neighborhood (see attached).

Mayor Gross - limiting to 2 minutes per person one time.

Rodner Brewer - I agree with Tess's comments.

James Gibson, 210 Fairfax St. - I applaud Tess for what she said. I am probably the cause for this. I've been told by code enforcement for years about not being able to have a carport. Then we wanted a 2 story garage, got turned down. Years ago everything was put on the property line. We cannot comply with today's rules. Our properties are too small, because of the laws.

Mayor Gross - however we don't have a lot of control because we have to follow New York State law. Have to have 6 feet between structures. We can't make it any less. The state says we can go higher though.

Atty. Groff - There are two restrictions, one is NYS building code, other is land use regulation. NYS code is not enacted by the Village. State says if buildings are attached ok, but if they are not attached then they have to be 6 feet apart. Rationale is fire safety measure. We don't have any authority over that. It is possible to apply to state of New York for a waiver. The Village would not be involved in this process. Code enforcement office can assist you in this process. Other thing is land use regulations. These the Village does have control over, they enacted them. Requires that improvements to properties be located in a certain envelope interior to every parcel. With the rationale being to make sure that properties are somewhat uniform. Those requirements are that certain improvements be located away from the line - setback requirements. They require that structures being constructed certain distances from boundary lines. There is a variance process for exceptional circumstances. Process is something the Village has jurisdiction over. Many of the people who have carports in this area have initiated this process. I urge you to look at 5 criteria to come up with reasons why your project or your situation satisfies those criteria. Ask for more time if you need it. Carports were intentionally included as a structure to be regulated. It was intended to protect neighbors from encroaching on one another. Also because some of them aren't well maintained.

August 12, 2004 (cont'd)

Mrs. Brewer - Planning Board said they were ugly. Said they were a detriment.

Atty. Groff - I urge you to look at the 5 criteria. Anything else is irrelevant. Planning Board is a recommending body only. Zoning Board of Appeals takes final action.

Mayor Gross - Unfortunately you've created your own problem. We can't give you a permit today for something you built 5 or 6 years ago. We have to go by what we have today. I have asked Sharron tomorrow on the water bills to put something in on this matter, it's the only way we can get messages to most people. Use the paper too. We're going to do our best to get to everybody.

Discussion ensued.

Don Coats - According to the law, if its under 120 sq. ft., the state does not require a permit. For example an 8 x10 shed, etc. Anything over that does. Whether permanent or not. Membrane structures are different. They fall under a different section of building code which says if they stay up so long they are a permanent structure. Still has to meet setbacks though.

Atty. Groff read the definition of a building.

Christopher Jones - Catalpa Drive - would like to thank Tess for her comments. You still didn't answer her question about why it took so long to find these. One guy bought a house that had one already. How did that happen.

Mayor Gross - I wish I had an honest answer for you, why it wasn't seen, I'm not sure. For example, sidewalks...its very difficult to tell someone they have to improve their sidewalk, then we are obligated to go to that person and get them to repair it, because we are ultimately responsible after we are aware. If there is a fire, and it spreads to your neighbors, now they can sue this Village and get money too. Unfortunately, once we become aware of something, we have to act on it.

Ray Zeigler - our homes are pre-existing on a small lot. I am sure that the law can be changed. Can I ask the Mayor to help our neighbors and get this straightened out.

Tess Banfield - This Board has not taken the blame for what you've done. I'm talking about the stress and everything else it has caused in our neighborhood.

Addie Kelley - I'd like to know if there is a regulation for cats.

Chief Kole - Its covered under the nuisance law, but cats aren't licensed. Police Department doesn't have the ability to enforce. Can't find out legal owner because they are not licensed.

Addie Kelley - Other villages have come up with regulations for cats. We have a terrible situation in our neighborhood. It is absolutely disgusting. The only resource we were told was to have the CSO come and trap the cats. Time for an ordinance for cats. Corning has a law, and other municipalities. We need something. It's a sick nuisance.

Paul Houck, 205 Fairfax. We have a problem with cats too. Nobody can help us. But other areas have laws for cats. It's a serious problem.

Mayor Gross - we can look at this issue again. Your request can be looked into.

JoEllen Clark, Orchard Street - thank you for no parking signs. Parking is much improved.

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

Respectfully submitted,

Sharron Cunningham
Clerk-Treasurer

/rmb