

**Minutes**

**Village Board of Trustees**

**May 27, 2010**

A meeting of the Village of Horseheads Board of Trustees was held on the above date at 7:00 p.m.

Present were:

**Village Board and Staff:**

Deputy Mayor Ron Swartz  
Trustee George Koliwasky  
Trustee Suzanne Peters  
Trustee Larry Clark  
Village Manager Walt Herbst  
Village Attorney John Groff

Clerk-Treasurer Sharron Cunningham  
Fire Chief Arthur Sullivan  
Parks Director Nate Nagle  
Deputy Clerk Michele Accavallo  
Manager's Asst. Rachel Baer

**Others:**

Dave Padgett, W. Franklin St.  
Mike Swasta, Watkins Rd.  
Howard Miller, Sunset Dr.  
Rebecca Sommers, PA  
Jason Brady, Anncox Lane  
Jean Quinn, Gardner Rd.

Terry Bolt, Lee Ave.  
Tara Edwards, Broad St.  
Tess Banfield, Catalpa Dr.  
Richard Thompson, VA  
News Media

Resolution by Trustee Clark, seconded by Trustee Peters

BE IT RESOLVED, that the reading of the minutes of the May 13, 2010 Board of Trustees Meeting be dispensed with and the same stand approved as entered by the Clerk.

Roll Call Vote:

Deputy Mayor Swartz:       Aye  
Trustee Koliwasky:         Aye  
Trustee Peters:             Aye  
Trustee Clark:             Aye

Resolution by Trustee Koliwasky, seconded by Trustee Peters

BE IT RESOLVED, that the minutes of the Traffic Commission Meetings of May 12<sup>th</sup> and May 26<sup>th</sup> be received and placed on file in the Village Clerk's Office.

Roll Call Vote:

Deputy Mayor Swartz: Aye  
Trustee Koliwasky: Aye  
Trustee Peters: Aye  
Trustee Clark: Aye

Resolution by Trustee Clark, seconded by Trustee Koliwasky

WHEREAS, the Village of Horseheads is a member of the Koppers Pond RI/FS Group, and

WHEREAS, the Group has from time to time engaged individuals and firms for professional services in connection with the Koppers Pond Project, and

WHEREAS, the Group had heretofore engaged the services of AMEC Earth and Environmental for certain professional services, and

WHEREAS, key personnel of that firm are now employed by Integral Consulting, Inc., and

WHEREAS, Leo Brausch, project coordinator for the Koppers Pond RI/FS Group has recommended that the Group retain Integral Consulting, Inc., in connection with the project after having terminated the professional services agreement with AMEC.

NOW THEREFORE BE IT RESOLVED, that the Village of Horseheads Board of Trustees does hereby authorize Village Manager Walt Herbst to execute, on behalf of the Village of Horseheads, an agreement with Integral Consulting, Inc. for professional services in connection with the Koppers Pond Project (Kentucky Avenue Wellfield Superfund Site).

Roll Call Vote:

Deputy Mayor Swartz: Aye  
Trustee Koliwasky: Aye  
Trustee Peters: Aye  
Trustee Clark: Aye

Resolution by Trustee Koliwasky, seconded by Trustee Peters

BE IT RESOLVED, that Village Manager Walt Herbst is hereby authorized to execute an agreement between the Village of Horseheads and the Horseheads Central School District for its School Resource Officer Program; the term of said agreement to be July 1, 2010 to June 30, 2011.

Trustee Koliwasky asked if this is full or part time.

Manager Herbst stated that it is full time, 12 months, and if not he can work here, and can be pulled during emergencies.

Roll Call Vote:

Deputy Mayor Swartz: Aye  
Trustee Koliwasky: Aye  
Trustee Peters: Aye  
Trustee Clark: Aye

Standard Workday for Elected and Appointed Officials

Atty. Groff briefed the Board: The regulation which was modified last year says that elected and appointed officials provide greater reporting of service for retirement. We were required to keep time for one month and used to calculate time service credit for those in retirement system. Now the requirement is a 3 mo. reporting period. Also provides that its effective to newly appointed and elected officials. Appointed people would be myself and Fire Chief Arthur Sullivan. Elected means all elected officials. Applies to personnel who are not really full time positions. The person starts recordkeeping effective with their appt., submits report within 150 days, then the Board acts, then reports to retirement system. In some cases the elected officials are not members of retirement system, then they are not required to keep time. For those who are members, you have a phase in the process where you could continue to report the one month record of your time, and that would be annualized until the next term. Lots of information on their website. Once resolution is adopted it is supposed to be on our website for one month. We are at the end of the 180 day period. The sample resolution in your packet identifies offices and provides for all positions even though some are not members of the retirement system. The reason for listing them all is that it may be valuable to standardize process now and do resolution on an annual basis. The 3 month reporting period starts for newly elected. For those of you already on, you were supposed to be doing it already.

Discussion ensued. Atty. Groff added that all elected officials should have been keeping records for a month and turning it over to the Clerk-Treasurer. You don't have to keep records if your not in the retirement system. But you still have to have a standard workday set for your position. It is possible to go back and adjust records, then Sharron can file an adjustment report.

Resolution by Trustee Clark, seconded by Trustee Peters

BE IT RESOLVED, that the Village of Horseheads Board of Trustees hereby establishes the following as standard work days for elected and appointed officials and will report the following days worked to the New York State and Local Employees' Retirement System based on the record of activities maintained and submitted by these officials to the clerk of this Body:

Title	Name	SS# (last 4 digits)	Registration Number	Standard Work Day (hrs/day)	Term Begins/Ends	Participates in Employer's Time Keeping System	Days/Month (based on Record of Activities)
<b>Elected Officials</b>							
Vil. Justice	Driscoll	2350	N/A	6	4/1/06-12/1/10	N	
Vil. Justice	Tarantelli	2086	N/A	6	12/1/08-11/30/12	N	
Mayor	Zeigler	4157	36139152	6	12/1/07-11/30/11	N	
Trustee	Swartz	7963	037143153	6	12/1/08-11/30/12	N	
Trustee	Koliwasky	7752	N/A	6	12/1/07-11/30/11	N	
Trustee	Peters	0015	043042266	6	12/1/08-11/30/12	N	
Trustee	Clark	9950	N/A	6	1/28/10-11/30/10	N	
<b>Appointed Officials</b>							
Vil. Atty.	Groff	2517	31419369	6	12/1/09-11/30/10	N	.41
Master Mechanic	Sullivan	7343	42880872	6	12/1/09-11/30/10	N	

AND BE IT FURTHER RESOLVED, that this resolution shall supercede prior resolutions of this Board regarding this subject.

Roll Call Vote:

Deputy Mayor Swartz:       Aye  
Trustee Koliwasky:         Aye  
Trustee Peters:             Aye  
Trustee Clark:             Aye

Motion by Trustee Peters, seconded by Trustee Koliwasky, that the following items be added to the agenda:

- Appleridge
- Liquor Licenses Waivers

Roll Call Vote:

Deputy Mayor Swartz:	Aye
Trustee Koliwasky:	Aye
Trustee Peters:	Aye
Trustee Clark:	Aye

Resolution by Trustee Peters, seconded by Trustee Koliwasky

WHEREAS, on or about August 1, 1999 Appleridge Retirement Community, Inc. (“Appleridge”), pursuant to a Trust Indenture with Manufacturers and Traders Trust Co. issued and sold \$19,810,000.00 in mortgage revenue bonds, and

WHEREAS, the bonds were issued on behalf of the Village of Horseheads pursuant to Revenue Ruling 63-20, and

WHEREAS, in May 2007 Appleridge failed to make the required payments under the mortgage loan resulting in a default and acceleration of the indebtedness. The mortgage loan was paid in full to the lender from proceeds of the FHA Insurance, and the bonds were redeemed in full, and

WHEREAS, FHA accepted an assignment of the mortgage note and mortgage which it held until ValStone Partners (“ValStone”) purchased same from FHA, and

WHEREAS, on or about August 17, 2007 the deed to the Appleridge project was released to the Village, and

WHEREAS, on August 21, 2007 the Village neither accepted nor rejected the deed, but continues to hold physical possession of same without recording in the Chemung County Clerk’s Office, and

WHEREAS, ValStone commenced foreclosure of the mortgage due to the defaults of Appleridge which foreclosure was stayed due to the filing of bankruptcy by Appleridge, and

WHEREAS, the January 12, 2010 Decision and Order of Hon. John C. Ninfo II, Bankruptcy Judge, US Bankruptcy Court, Western District of New York, lifted the stay and enabled the first mortgage holder to proceed with foreclosure of the mortgage, and

WHEREAS, the Village of Horseheads is informed and believes that Appleridge and the holder of the note and mortgage have agreed to a settlement of the disputes between them involving the exchange of certain assurances including a deed in lieu of foreclosure from Appleridge to the mortgage holder, and

WHEREAS, the claim of the mortgage holder is for \$19,017,751.59 with the reputed value of security for same (Appleridge) being \$5,000,000.00, thus appearing to make the project worthless in terms of its value to the Village of Horseheads, and

WHEREAS, the Village of Horseheads Board of Trustees and Village Manager have been in consultation with Village Attorney John Groff and Special Counsel Orrick, Herrington & Sutcliffe, LLP regarding the Village’s rights, liabilities and interests in the project and the Appleridge

facilities as more particularly described in the Trust Indenture dated August 1, 1999 and documents related thereto, and

WHEREAS, representatives of ValStone and the Village have engaged in settlement discussions to fix the interests of the Village and ValStone with respect to the Appleridge project.

NOW THEREFORE BE IT RESOLVED, by the Village of Horseheads Board of Trustees as follows:

1. This Board finds that the Appleridge project is valueless due to the fair market value of same being approximately \$5,000,000.00 and an outstanding delinquent first mortgage on same in the approximate amount of \$19,000,000.00.
2. Village Manager Walt Herbst is authorized to enter into a settlement agreement with ValStone to fix and determine the various rights of the parties in and to the project, which settlement will provide in pertinent part:
  - a) ValStone shall pay or cause to be paid to the Village of Horseheads the sum of \$10,000.00.
  - b) The Village of Horseheads will deliver a quit claim deed of all of its right, title and interest, if any, in and to the Appleridge project to ValStone along with any and all documents recently necessary to effectuate the filing/recording of same.
  - c) ValStone shall provide a representation or representation from its legal counsel that the Village's interest in the project on or about August 17, 2007 and to this date is for all practical purposes minimal or worthless.
  - d) ValStone shall cause the Village of Horseheads, its employees and officials to be named as an additional insured on its tail insurance policy relating to the Appleridge project.
  - e) Such other terms and conditions as are recommended by Village Attorney John Groff, and required by Village Manager Herbst.

AND BE IT FURTHER RESOLVED, that Village Manager Walt Herbst is authorized to sign any and all documents and to take any and all action necessary to effectuate this resolution.

Trustee Peters asked how many units are up there.

Atty. Groff - 109 I think.

Manager Herbst - occupancy rates are up.

Trustee Koliwasky - Why is it a quit claim deed.

Atty. Groff - we don't want to warranty anything. We don't assert that we are necessarily owners of the property. From our perspective it is to dispose of it because we do have it and to recognize

that even though we have a right under this revenue ruling, taking title to it is a bad idea.

Trustee Clark - The \$10,000 payment, was that at the recommendation of our special counsel.

Atty. Groff - Manager Herbst discussed a proposed disposition of this matter. It was in part to recover costs Village has incurred. We have not received the bill yet from our special counsel, but the \$10,000 will be adequate to cover the bills.

Roll Call Vote:

Deputy Mayor Swartz:	Aye
Trustee Koliwasky:	Aye
Trustee Peters:	Aye
Trustee Clark:	Aye

Resolution by Trustee Clark, seconded by Trustee Peters

WHEREAS, the NYS Alcoholic Beverage Control Law Section 64(2-a) provides in pertinent part that the Village Clerk shall be given at least 30 days prior written notice, by certified mail return receipt request, of the submission of any application to the NYS Liquor Authority for a liquor license, renewal of a liquor license, or alteration of a licensed establishment within the Village, and

WHEREAS, frequently applicants request that the Village of Horseheads waive the 30 days prior written notice requirement, and

WHEREAS, the Village Board deems it in the best interest of the Village, its residents and businesses, to establish a procedure for responding to such notices and requests for waiver of such prior written notice received by the Village Clerk.

NOW THEREFORE BE IT RESOLVED:

1. Upon receipt from an applicant of a notice of pending submission of an application for a liquor license, application for renewal of a liquor license, or an application for an alteration of a licensed establishment the Village Clerk shall make copies of said notice and forward same to the Village Code Enforcement Officer and Village Police Chief asking that they forward any written comments regarding the pending application to the Village Manager within 5 business days. In particular comments should reflect the relevant history of code violations and civil and criminal incidents.
2. If the applicant has requested that the Village Board waive the 30 day prior written notice period, the Village Clerk shall further advise the Code Enforcement Officer and Village Police Chief that such waiver is being requested by the applicant and any stated reasons for such waiver request.
3. All written responses regarding the application and/or waiver request received by the Village Manager shall be promptly distributed to the Village Board along with

the Village Manager's opinion, if any, either in favor of, against, or neither regarding the granting of the license, renewal or alteration, or waiver of the 30 day prior notice period.

4. The Village Manager, based upon the written comments received from the Code Enforcement Officer, Village Police Chief, or Village Board Members, or in the absence of same, shall cause preparation of an appropriate resolution expressing an opinion for or against any such application or waiver request, or expressing no opinion on such application or waiver request, and shall present said resolution to the Village Board as part of the next Board agenda for consideration.
5. In the event of adoption of any such resolution by the Village Board, the Village Manager shall promptly forward a copy of the resolution to the applicant.

Roll Call Vote:

Deputy Mayor Swartz:	Aye
Trustee Koliwasky:	Aye
Trustee Peters:	Aye
Trustee Clark:	Aye

Village Manager Herbst reported on the following items:

- Mayor and I spoke to chamber of commerce this week, was well received.
- Met with ADP reps to talk about possible next steps for payroll.
- Chief Sullivan met with me and discussed new fire truck with grant money, he has found a good used vehicle. We expect to be getting the bids out soon.
- Spoke at a Horseheads Rotary Meeting, about economic development.
- Manager roundtable went well.
- CSO's have issued over 62 citations for property maintenance - courtesy notices at this point.
- Worked with NYS and Chemung Co. to negotiate arrangements for repaving of Chemung St. State can't contribute financially, but is taking care of traffic and flagmen on the site. County will do blacktopping. Hopefully by July 12<sup>th</sup>.
- Had crack sealing of our own parking lot.
- Calamar - they want to meet again to discuss a new plan. I would like to get a sense of how we feel about another discussion if it continues to involve tax incentives.

Trustee Peters - no tax breaks.

Trustee Koliwasky - I agree, stick with our current position.

Trustee Clerk - I don't have problem just talking.

Trustee Herbst - the appt. is June 9<sup>th</sup>.

Chief Sullivan - good discussion on FEMA grant. On the flags, I had one firefighter take charge of that. He installed all the flags.

Public Comment:

Jean Quinn - the Maple Grove Cemetery looks great. Ours is the best looking one. Thank you for ramp work on Gardner Road. The workers left some pipe up there, very dangerous.

Trustee Herbst - they are taking that away as they have extra time. Taking to scrap yard.

Mike Swasta, 411 Watkins Rd. - at the Manager Roundtable meeting you said you had an upcoming meeting with Norfolk Southern. I wanted to know if that occurred.

Trustee Herbst - they didn't show up.

Mr. Swasta - Is Appleridge continuing to make their PILOT payments?

Manager Herbst said yes they are.

Mike Swasta - there will be a screening of a documentary called Gas Land at the Heights theater on Wed. June 9<sup>th</sup>. Starts at 7pm.

Tess Banfield - commended manager on roundtable meetings.

As there was nothing further to come before the Board, the meeting was closed at 7:47 p.m.

/rmb