

February 9, 2006 version

A regular meeting of the Town Board of the Town of Harrison, Westchester County, New York was held at the Municipal Building, 1 Heineman Place, Harrison, NY, Westchester County, on Thursday, February 9, 2006, at 7:30 PM. Eastern Standard Time. All members having received

MEMBERS PRESENT:

Stephen Malfitano Supervisor

Joseph Cannella)
Thomas Scappaticci) Councilmen
Patrick Vetere)
Robert Paladino)

ALSO ATTENDING:

Frank Allegretti Town Attorney
Fred Castiglia Village Attorney
Jonathan Kraut Deputy Village Attorney
Joseph Latwin Deputy Village Attorney
Robert Wasp Commissioner of Public Works
Maureen MacKenzie Comptroller
Hugh Greechan Town Engineer
David Hall Chief of Police

February 9, 2006

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PRESENTATION BY REGINA SINGEL OF THE WESTCHESTER GROUP THEATRE
REGARDING THE GROUP'S PRODUCTION OF SOUND OF MUSIC
ON MARCH 30th AND 31st, AND APRIL 1st.

Regina Singel, director of the Westchester Group Theatre stated that her Group is planning a production of the musical: "Sound of Music", to be held at the Louis M. Klein Middle School on March 30th and 31st, and April 1st. She said that the mission of her Group is to foster literacy through the Arts. Ms. Singel also listed the expenses of the production, which total about \$19,200, and said that they hoped to raise \$20,000 from ticket sales and donations.

February 9, 2006

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ACCEPTANCE OF CORRESPONDENCE AND REPORTS

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to accept the following correspondence and reports:

- 1a. Monthly report from the West. Shore Humane Society for December 2005.
- 1b. Monthly report from the Town Clerk for January 2006.
- 1c. Monthly report from the Building Inspector for January 2006.
- 1d. Monthly report from the Fire Marshall for January 2006.
- 1e. Year-end report from the Historian for 2005.
- 1f. Monthly report from the Recreation Department for January 2006.
- 1g. Monthly report from the Receiver of Taxes for January 2006.
- 1h. Monthly report from the Commissioner of Public Works for January 2006, along with a chart of complaints and requests of services.
2. Notification by the Town of Greenwich Planning and Zoning-Land Use Department for the proposed amendment to the Town of Greenwich Building Zone Regulations for changes to Section 6-109.1 subdivision 5. A public hearing is tentatively scheduled for March 7, 2006.
Refer to Town Planner and Planning Board
3. Notification by the NYS DOT re Restriction of Highway, Contract D260028.
Refer to Commissioner of Public Works

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 96 -- a

ADOPTION OF A NEGATIVE DECLARATION UNDER SEQRA
RE: THE ADDITION OF CHAPTER 199, SECTIONS 199-1 THROUGH 199-14
ENTITLED "STEEP SLOPE PROTECTION" AS LOCAL LAW #3 OF 2006

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to adopt a Negative Declaration under SEQRA with regards to the addition of Chapter 199, Sections 199-1 through 199-14, entitled "Steep Slope Protection" to the code of the Town of Harrison as Local Law #3 of 2006.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Building Inspector and the Town Engineer.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 96 -- b

CONTINUATION OF THE PUBLIC HEARING FOR THE PURPOSE
OF ADDING CHAPTER 199, SECTION 199-1 THROUGH 199-14
ENTITLED "STEEP SLOPE PROTECTION" AS LOCAL LAW #3 OF 2006

This proposed law was discussed in full at the January 26, 2006 Town Board meeting.

On motion of Councilman Cannella, seconded by Councilman Scappaticci, with all members voting in favor, the Hearing was resumed.

The Attorneys stated that a review of the proposed Law had been done, and a few minor corrections to the English had been made.

There were no comments from the audience.

On motion of Councilman Cannella, seconded by Councilman Scappaticci, with all members voting in favor, the Hearing was closed.

February 9, 2006

2006 -- 96 – c

ADOPTION OF LOCAL LAW #3 OF 2006
ENTITLED “STEEP SLOPE PROTECTION”
ADDING CHAPTER 199, SECTION 199-1 THROUGH 199-14
TO THE CODE OF THE TOWN OF HARRISON

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to adopt, as Local Law #3 of 2006, Chapter 199 of the Town Code of Harrison entitled “Steep Slope Protection”, Sections 199-1 through 199-14.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Building Inspector, the Town Engineer, the Planning Board and the Zoning Board of Appeals.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 97

APPROVAL TO CONTINUE UNTIL MARCH 9TH THE PUBLIC HEARING
AMENDING CHAPTER 235 OF THE CODE OF HARRISON
RE: PARKING REQUIREMENTS FOR CERTAIN USES AND LOCATIONS,
SCHEDULE OF OFF-STREET PARKING SPACE REQUIREMENTS
FOR NON-RESIDENTIAL USES

Councilman Paladino suggested that the Board should revisit the March 2004 memo from Town Planner Pat Cleary regarding the number of spaces that should be included in any exemptions from the requirements. He also asked that the August 2005 memo from Deputy Attorney Jonathan Kraut be revised to include a column listing other communities that grant exemptions, and that Board be given a list from the Zoning Board of Appeals of any projects before them that would be affected by these exemption regulations.

Councilmen Cannella and Scappaticci pointed out that Town Planner Cleary had previously been asked to do an analysis of today's parking requirements throughout the business districts as the last analysis had been done in 1995.

It was agreed that Mr. Cleary would be asked to attend the March 9th Town Board meeting when this proposed law will again be discussed.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to continue until March 9th the Public Hearing pursuant to Article 2, Section 10 and Article 3, Section 20 of the Municipal Home Rule, amending Chapter 235 to the Code of the Town of Harrison Zoning Ordinance to amend the parking requirements of certain uses and locations as Local Law No. ___ of 2006. §235-37, Schedule of Off-Street Parking Space Requirements for Nonresidential Uses.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Building Inspector and the Town Engineer.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

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APPROVAL TO CONTINUE UNTIL MARCH 9TH THE PUBLIC HEARING
AMENDING CHAPTER 235 OF THE CODE OF HARRISON
RE: ADDING DEFINITIONS TO THE SECTION ON PARKING REGULATIONS

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to continue until March 9th, the Public Hearing amending Chapter 235 to the Code of the Town of Harrison Zoning Ordinance to add Definitions and amend the parking requirements for certain uses and locations as Local Law No. __ of 2006.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Commissioner of Public Works, the Building Inspector and the Town Engineer.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 99

APPROVAL TO CONTINUE UNTIL MARCH 30TH THE PUBLIC HEARING
ADDING CHAPTER 200 TO THE CODE OF HARRISON
ENTITLED "SIGNS"

Supervisor Malfitano said that the Hearing was being continued as there was no new information on the proposed Law at this time. He said that he would make a presentation to the Chamber of Commerce at their next meeting and ask for their input and comments.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to continue until March 30th the Public Hearing pursuant to Article 2, Section 10 and Article 3, Section 20 of the Municipal Home Rule Law for the purpose of adding Chapter 200 entitled "Signs" to the Code of the Town of Harrison, Sections 200-1 through 200-10, as Local Law No. ___ of 2006 of the Town of Harrison.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Commissioner of Public Works, the Building Inspector and the Town Engineer.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

On motion duly made and seconded,
the Meeting was recessed for Executive Session
about 8 PM.

The Meeting was reconvened about 8:15 PM.

February 9, 2006

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APPROVAL TO SELL A FOUR- ACRE PARCEL OF LAND
ZONED ONE-ACRE RESIDENTIAL AND
KNOWN AS VACANT LAND ON BARNES LANE – BLOCK 981, Lot 130 (P/O32)
TO WINTERHILL REALTY LLC, 70 WEST RED OAK LANE, WHITE PLAINS,
FOR \$2.4 MILLION, SUBJECT TO A PERMISSIVE REFERENDUM

Deputy Village Attorney Jonathan Kraut explained that at one time the Town owned a half-acre parcel on Barnes Lane which, as part of the Gache Litigation settlement, was to be swapped for a four-acre parcel on which to construct a new Town garage. Mr. Kraut stated that there is an entity that wishes to purchase this four-acre parcel, for \$2.4 million dollars.

Supervisor Malfitano stated that, as part of the Court orders in the Gache litigation, there were over \$1 million dollars in penalties that the Town had to pay as well as the clean-up costs, and this sale will recoup some of those expenditures. He continued that, by law, the sale is subject to a Permissive Referendum, which could be brought by any interested party who, within 30 days, collects on a petition for the referendum the signatures of at least 5% of the number of voters who voted in the Town's last General Election.

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to approve the sale to Winterhill Realty, LLC, 70 West Red Oak Lane, White Plains, NY, 10604, for the sum of \$2.4 million dollars, the four-acre parcel zoned one-acre residential which is owned by the Town and known as vacant land on Barnes Lane, Block 981, Lot 130 (P/o32).

FURTHER RESOLVED that the purchaser will, upon signing the contract, pay the Town 5% of the purchase price, with the full price to be paid upon closing, which closing will be shortly after Permissive Referendum period has elapsed.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 101

AUTHORIZATION FOR CHIEF OF POLICE DAVE HALL TO ATTEND THE
15TH ANNUAL EXECUTIVE TRAINING CONFERENCE IN MEMPHIS, TENNESSEE
FROM APRIL 9-13, AT A COST NOT TO EXCEED \$1,800

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to approve the request of Chief of Police Dave Hall for authorization to attend the 15th Annual Executive Training Conference hosted by the FBI – Law Enforcement Executive Development Association, in Memphis, Tennessee, from April 9 through April 13, 2006, at a cost, including registration and travel, not to exceed \$1,800. This is a budgeted item.

FURTHER RESOLVED to forward a copy of this Resolution to the Chief of Police and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 102

AUTHORIZATION FOR LT. ROBERT COLLINS TO TAKE TWO COURSES AT
IONA COLLEGE, 2006 SPRING SEMESTER COST: \$3,811

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to approve the request of Chief of Police Dave Hall for authorization for Lt. Robert Collins to take the following courses at Iona College, 2006 Spring Semester, at a total cost of \$3,811. for tuition and books:

1. Database Systems for Criminal Justice
2. Thesis/Computer-Based Research

FURTHER RESOLVED that, upon satisfactory completion and submission of proof of Lt. Collins' attendance at the above listed courses, and that, upon submission of proof of payment, the Comptroller be authorized to audit, and upon audit, to pay same.

FURTHER RESOLVED to forward a copy of this Resolution to the Comptroller and the Chief of Police.

Adopted by the following vote:

AYES: Councilmen Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: Councilman Vetere

ABSENT: None

February 9, 2006

2006 -- 103

AUTHORIZATON FOR TOWN CLERK JOAN WALSH TO ATTEND THE
ANNUAL CONFERENCE OF THE NEW YORK STATE TOWN CLERKS ASSOCIATION
IN SARATOGA, NY APRIL 23-25, AT A COST NOT TO EXCEED \$650

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to approve the request of Town Clerk Joan Walsh for authorization to attend the annual Conference of the New York State Town Clerks Association in Saratoga, NY, from April 23rd through April 25, 2006, at a cost not to exceed \$650. This is a budgeted item.

FURTHER RESOLVED to forward a copy of this Resolution to Town Clerk and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 104

APPROVAL OF SPECIAL EVENTS PERMIT TO THE NATIONAL ALLIANCE FOR
AUTISM RESEACH FOR A WALK-A-THON ON SUNDAY, JUNE 4, 2006
AT MANHATTANVILLE COLLEGE.

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to approve the request of Valerie Zygmont of the National Alliance for Autism Research for approval for a Special Events Permit for a Walk-a-thon, Sunday, June 4, 2006 at Manhattanville College with the route to be fully contained on campus, with registration at 9:30am and the walk commencing at 11:00am.

FURTHER RESOLVED that the use of the Recreation Department's portable stage is approved.

FURTHER RESOLVED that all fees be waived.

FURTHER RESOLVED that the Indemnification Agreement be accepted and a Certificate of Insurance be submitted.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Chief of Police, the Chiefs of the Purchase and West Harrison Fire Departments, the Superintendent of Recreation, the Chief of the Harrison Ambulance Corps and Ms. Zygmont.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 105

APPROVAL OF A CORRECTION OF A BASIC "STAR" EXEMPTION
FOR BLOCK 232, LOT 30, AMENDING THE 2005 SCHOOL TAX BILL

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to approve the request of Deputy Assessor Mark Heinbockel for the correction for (Block 232, Lot 30), Basic STAR exemption.

FURTHER RESOLVED to authorize the Receiver of Taxes to amend the 2005 School Tax bill.

FURTHER RESOLVED to authorize the Comptroller to refund the amount for the STAR exemption to the property owner.

FURTHER RESOLVED to forward a copy of this Resolution to the Assessor, the Receiver of Taxes and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 106

AUTHORIZATION TO ADVERTISE AND RECEIVE BIDS
FOR A 2007 CHEVROLET TAHOE FOR FIRE DISTRICT #1 AND FIRE DISTRICT #2

On motion of Councilman Scappaticci, seconded by Councilman Cannella,

it was

RESOLVED to approve the request of Director of Purchasing Judy D'Agostinis for authorization to advertise and receive bids for the purchase of a 2007 Chevrolet Tahoe for FD #1 and FD #2 as there are no Suburbans or Tahoes available under New York State Contract at this time.

FURTHER RESOLVED to forward a copy of this Resolution to the Comptroller, the Director of Purchasing, and the Chiefs of FD #1 and FD #2.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 107

APPROVAL TO SCHEDULE A PUBLIC HEARING ON THE CHANGE OF ZONING
ON OLD ORCHARD STREET FOR MARCH 30, 2006

Deputy Village Attorney Kraut stated that there was a "scrivner's error" in the adopted Law which should be corrected, that one or more lots were not included in the description. He asked that a Public Hearing be scheduled to make sure that all lots were properly listed. Councilman Cannella asked that the Hearing be scheduled for the second Town Board meeting in March so that the Planning Board might review the matter.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to schedule a Public Hearing for March 30, 2006, to consider the wording of the Local Law creating the new building zone, R-50, to insure that all the lots which the Councilmen intended to be covered by this zoning change were indeed included.

FURTHER RESOLVED to forward a copy of this Resolution to the Law Department, the Building Inspector, the Town Planner and the Town Engineer.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 108

REPORT FROM SUPERVISOR MALFITANO THAT HE HAD RECEIVED
THE LIST OF CARS ASSIGNED TO TOWN EMPLOYEES

Supervisor Malfitano stated that he had received the list of cars assigned to Town employees. He distributed it to the Councilmen, and asked them to review it and make comments.

February 9, 2006

2006 -- 109

DISCUSSION
ISSUES RAISED BY RESIDENT LEILA WOOD-SMITH REGARDING THE APPROVAL
PROCESS, THE LOCATION AND THE TIMETABLE FOR CONSTRUCTION OF THE
PROPOSED WATER FILTRATION PLANT TO BE BUILT BY THE WESTCHESTER
JOINT WATER WORKS ON PROPERTY ADJACENT TO PURCHASE STREET,
CLOSE TO THE AIRPORT

Resident Leila Wood-Smith raised the following issues with reference to the proposed Water Filtration Plant planned for a site adjacent to Purchase Street, just south of the Westchester County Airport. The building is one story -- although 40 feet high, and the length is equivalent to two football fields. Chemical filtration will be used, not ultra-violet.

Ms. Wood-Smith stated that she is one of the seven members of the New York State Environmental Facilities Corporation, with three of the other members being the Commissioner of the Department of Conservation, the Commissioner of Health for NY State, and the Secretary of State, adding that it is therefore easy to chat across the table on various issues (including the matter of the filtration plant).

Lawsuit

Ms. Wood-Smith continued that this Board started to review this matter while there was on-going litigation trying to stop the construction. She pointed out that WJWW was one of only six water suppliers across the State that had refused to provide required filtration avoidance determination statistics. She stated as follows:

- WJWW never complied with the mandated deadline (to provide these statistics) and it is that failure to do so which was the (focus of) the lawsuit.
- The Court decision stated that the WJWW had not complied -- that was the sum and substance of the lawsuit.

Ms. Wood-Smith continued that as a result (of the refusal of the WJWW to abide by the mandates) the Department of Health does not smile on the WJWW, because they see them as extremely recalcitrant. There have been many discussions as to possibly doing something lesser than what had been mandated, which would be some type of filtration but that (idea) was not too hopeful. However, CFB revisited this matter after the litigation (was settled) about the time the Town started to consider options. This lawsuit compelled the WJWW to come up with plans and a design for a filtration plant, and to build it. And once the plans are approved by NY State, there is a pretty onerous schedule for bidding and construction. That (Court) decision did not mandate, nor has the Dept of Health mandated, what type of facility, nor the design, nor the location. This is the background as I want you to understand (it) --that the Court decision did not speak to those issues.

Supervisor Malfitano replied that (the Court decision) did (issue a) mandate with regard to what type of facility.

Leila Wood-Smith pointed out that the decision only said a filtration facility had to be built, not what kind of design.

Supervisor Malfitano stated that there are different designs (for chemical filtration) as opposed to some other kind of filtration such as ultraviolet.

Leila Wood-Smith said that she is meeting with many people to see what solutions they can come up with. She added that she is not going to vote on this as the EFC Board (Environmental Facilities Corporation) has already placed (the project) on their "intended use" plan and probably will provide funding to help you , or come up with something that makes it work for everyone. The EFC Board's concern is regarding safety, that the access is by a cul-de-sac in a residential community because (safety) has become a concern across the state for all these types of facilities, and perhaps there are other options such as (access) through the airport. I am telling you this by way of background, Ms. Wood-Smith continued, adding that she has met with the Mayor and WJWW officials, that she did it privately, not publicly, so that there was not any pressure.

Ms. Wood-Smith went on that she is speaking (publicly) tonight because she is deeply concerned about two things that have happened: (1) it had been represented to the Planning Board ,when this project came before it, (that it should be) considered as a Type 2 action because it was mandated by a Court, and therefore they had no right to review it or change the location. She continued that she went back and reviewed all the tapes of the Planning Board meetings, to determine who made that misrepresentation, and it was counsel and engineers for the WJWW. It was not a Town official who told them (they had no authority to review the application). As a result, no review was made as to the location or any alternatives or on the impact on the community of this facility or its visual impact.

Ms. Wood-Smith also stated that she had learned something today that she did not previously know, which is that Hazen and Sawyer could have used any number of designs for this facility, but they chose a building that is over fifty feet high. In their EAF presentation to the Planning Board, they referred to it as a one-story building. The zoning ordinance does not permit a building of that height in that area. It exceeds the permissible height, and only the Zoning Board has the jurisdiction to vary that requirement. (The Planning Board) was told that this (exception as to height) could be done by virtue of the Special Exception Use Permit process. The only way that can happen is if the Special Exception Use Permit legislation itself specifically states (that authority) in the statute with regards to a special facility. That permission does not appear in the legislation. As a result, any decision by the Planning Board or the Town Board is (legally) totally void. Having said all that, one of the reasons that we did not raise all these issue, although numerous letters were sent to the Town Board asking to discuss this....

Mr. Malfitano interrupted and stated that (the letters) were re-directed to the WJWW.

Ms. Wood-Smith continued that, in reply, the WJWW officials stated that all the issues were considered by the Planning Board and the Town Board. Not only that, they make the further misrepresentation that, in 2000, this project was fully vetted by the Planning Board and approved. This is a direct lie, a total misrepresentation, and the public record demonstrates that. She stated that she is asking that this (her findings) be made a part of the WJWW record, and part of the Town's record also.

Ms. Wood-Smith went on to say that her request tonight is that, because substantial misrepresentations have been made to the Planning Board and to the Town Board and as a result

of that, the serious impacts related to this (building) and a possible mitigation that could be provided to eliminate a number of these impacts, have not been considered, and (there is a) serious obligation that SEQRA imposes on both (the Planning and Town) Boards to make those determinations before they take an action. Further, Ms. Wood-Smith continued, in her discussion with the Dept of Health (officials), and the Supervisor is well aware of this , they have made it clear to the Supervisor that they are willing to hold back on any penalties for two to three months.

Supervisor Malfitano stated that is absolutely not true. He said that he had a phone call with the Director who has a different view (than Leila stated.)

Ms. Wood-Smith replied that his view is that he would give the Town two or three months.

Mr. Malfitano asked Ms. Wood-Smith to have the Director (of the Dept of Health) write a letter stating that they are willing to "forebear" on any penalties, and he will be happy to (have further reviews.)

Ms. Wood-Smith stated that the Director had told her that he had told Mr. Malfitano that he (Mr. Malfitano) should go back and discuss (the idea of a delay) with the Town's counsel, and then get back to him (the Director) after they decided what to do.

Mr. Malfitano told Ms. Wood-Smith that he was not going to get into a debate with her, adding that if the Town has the ability to do something other than what is being done, he has asked for this for two years, find it so far no one has been able to do anything. He continued that he had made the phone call to the Director, who told him that the Town had two weeks to determine another site and also have the ability to "control" it. He added that (such) is a virtual impossibility. Mr. Malfitano also said the Director had also made it very clear to him that the option was really not an option. He added that he had discussed it and thus far not been able to do anything, that the planning is so far down the road, to change the direction, with a Court order that has stiff penalties, is almost an impossibility. Mr. Malfitano then said that if Leila could bring the Commissioner of the Dept of Health to his office, or produce a document which gives a window of two to three months to find an alternate location without penalty, and then get the Court to go along with it, he would be more than willing to do that.

Mr. Malfitano also said that the WJWW is continuing their Public Hearing on Monday at 4 PM, on easements. Every member of the WJWW is committed to doing two things (1) following the order of the Court and thus not subjecting the three communities (Harrison, Village of Mamaroneck and the Town of Mamaroneck) to substantial penalties, and (2) to the extent that what you claim is valid and accurate, to go along with that. He added if there is something to be gained, he would be happy to bring it to that Hearing.

Ms. Wood-Smith replied that she would get the documentation requested, that at this junction, there are opportunities for a different site. She added that she has had meetings with Marty Rogowsky, (Majority Leader in the County Board of Legislators) and he is pursuing it with County officials. She also stated that perhaps this Town Board is not aware of the fact that in 1995, the WJWW did a site evaluation project and found six or seven sites and (the present site)

was not their preference. Their preferred site was at the Airport. She added that there is nothing in writing that turned that (Airport) site down.

Mr. Malfitano replied that this is where we are today: we have a Court order and the challenge went all the way to the Court of Appeals.

Ms. Wood-Smith pointed out that the lawsuit was based on the failure of the WJWW to comply with statutory requirements, not on the type, design or location of the facility.

Ms. Wood-Smith also stated that there is nothing in the Court order that precludes the Town's obligation to comply with SEQRA and do a thorough review of the location, the facility and the impacts that will be generated. She added that the EAF that was submitted by the WJWW along with their oral statements contained numerous misrepresentations. She added that she submitted these concerns to the Town Board and were told to please work it out with the WJWW.

Mr. Malfitano stated that the objections were reviewed by Town's counsel and counsel for the WJWW.

Ms. Wood-Smith stated that our (hers and the people she represents) position is that if both the Town Board and the Planning Board granted approval based on those substantial misrepresentations, and no review ...

Mr. Malfitano pointed out that this was only Ms. Wood-Smith's opinion.

Ms. Wood-Smith replied that these statements are based on the public record, and she would be happy to make the entire record available to the Board. She then questioned if it isn't the problem that there is a deliberate effort on the part of the WJWW to prevent a full review of this project under SEQRA.

Mr. Malfitano pointed out that he is not aware of any such effort and the Town must comply with the Court Order.

Ms. Wood-Smith then asked Mr. Malfitano if it is his position that he believes that Court order precludes the Town from doing a review pursuant to SEQRA and pursuant to the provisions of the Special Exception Use Permit process.

Mr. Malfitano replied that this is the opinion and advice of the Town attorneys and the WJWW attorneys.

Ms. Wood-Smith then asked Mr. Malfitano if it was his position that the Town is allowed to approve a project without any review or any compliance with the laws of the Town, due to the Court Order.

Mr. Malfitano stated that there was a position that the WJWW didn't even have to go through the (review) process. If you disagree with this position,

Ms. Wood-Smith said that she wants the Board to be aware of all this information.

Councilman Paladino posed a question relating to the Special Use Permit. He stated that he was concerned that the Permit was granted not knowing that the WJWW would have to seek more easements or that condemnation was being contemplated. He added that he learned it from a notice distributed by Ann Gold of PEPA, that he was not aware that easements on additional land were needed. Mr. Paladino continued that he later received a letter from the owner of the residential property regarding the need for these easements.

Mr. Malfitano stated that, if you look at the history of this whole parcel as it moved through the approval process, the fifty foot right-of-way and the easement that the WJWW possesses from Purchase St to the rear of the property (where they will build the plant), the roadway is clearly in the ownership and control of the WJWW. If you look at the proposed subdivision at the Planning Board stage, the subdivision included an area for a retention pond which would serve as a retention pond for the water runoff from the road and the surface water runoff.

Ms. Wood-Smith pointed out that they (the ponds) were for houses, not for this project.

Mr. Malfitano stated that the bottom line is (that according to) the understanding we were presented with, the owner of the residential subdivision was operating under the understanding, and had communicated it to the WJWW, that they would be responsible for construction of the road. Subsequently the property was sold, and subsequently the WJWW was pushed into a schedule that they had to design and build a structure that it was hoping it would not have to build. What that has done is flipped things, the roadway issue is now clearly on the shoulders of the WJWW and the retention ponds need to be constructed to accommodate the drainage of that roadway, to be located in the front parcel, which is the residential property. He added that the areas reserved for the two retention ponds, one of which is a wetland area, do not interfere with the buildable lots. He concluded by stating that is the history of the project.

Ms. Wood-Smith pointed out (the matter) was more complicated than that, that the original approval was done in one night, and then when the WJWW came in for a re-subdivision, it also was approved in one night. There wasn't any discussion of the facility nor a review of plans because there were no plans. She added that no engineering plans were ever submitted to the Planning Board for review or approval that showed the engineering that would accommodate the residential lots as well as the Plant. Counsel for the WJWW at that time, Mr. Maven, presented to the Planning Board that the access could be from the Airport or from Purchase Street.

Mr. Malfitano stated that (this process) was not uncommon at that time, that the Planning Board approved the use in the original application.

Ms. Wood-Smith pointed out that the Planning Board had an obligation to do an engineering review. She added that the Planning Board did not approve the use (of the site for a filtration facility.)

Mr. Malfitano stated that Ms. Wood-Smith was raising issues that don't belong (before this

Board).

Councilman Paladino said that many of the issues being raised are long gone, but his issue, which is now relevant, is that the Town Board has granted a Special Exception Use Permit and at the time that the Board granted it, he was not aware the WJWW did not have sufficient land interests to build the project. He added that he was not aware that condemnation was contemplated and certainly not aware of the need to take property belonging to the owner of the residential property.

Mr. Malfitano said that as a Trustee of the WJWW, he also was not aware of these needs, but that in his view the taking was de-minimus.

Ms. Wood-Smith said that there are serious implications in what she has raised, that the engineering (review) was not done, and in fact, and now they have looked into it, the engineers have determined that you cannot put the utilities for both the facility and the residential portion in the roadway.

Mr. Malfitano replied that the WJWW engineers, Sawyer and Hazen, said it could be done.

Ms. Wood-Smith disagreed, saying that this is the reason they have to condemn this additional land is because they never engineered for this. She added that, if this goes through as planned and they put in the water pipes, they will never be able to put in a sewer in the residential portion of the property and they will force the owner of the residential property to spend millions of dollars to put in the infrastructure.

Mr. Malfitano said that he had never heard that.

Attorney Kraut said that it sounds like Ms. Wood-Smith has certain issued of proof that she thinks are relevant that the Board does not have, and she has said that she will put it together.

Councilman Paladino said that, in light of the fact that the WJWW, after the Town granted the Special Exception Permit, now has gone out and indicated that they have to engage in condemnations for wither easements of property, does that in any way shape or form have any impact of the validity of the Special Exception Use Permit, as has been argued by counsel for the developer, Robert Weininger. In his letter of Jan 12th. Mr. Weininger basically questioned the validity of the Special Exception Use Permit. Mr. Paladino asked, since this is an action of the Town Board, not the WJWW, as the Town Board granted the Permit, does the Town Board need to revisit this issue, based on what the Board now knows?

Mr. Kraut suggested that the answer is not a simple "yes," or "no", and that he would prefer to discuss it in Executive Session.

Mr. Cannella said that over the years he has heard many hours of these kinds of presentations, and the only way to deal with the issues raised, what he is recommending is that the Legal Department listen to all of it. He continued that (1) if this Board has issued a permit improperly, for any one of the issues raised, this Board needs to know that, and (2), the overriding issue, from

his perspective, is exactly what is the compulsion as a result of the Court Orders and the potential contempt proceedings if in fact the Board does not affirmatively act within a certain time frame. He also stated that Ms. Wood-Smith has indicated that there is some opportunity that the Town can get out from under, and no one desires to go through the expense ...

Attorney Kraut, on the issue of whether or not to get out from under a Court Order, it must be in writing.

Ms. Wood-Smith agreed, pointing out that if the parties agree to something, the Court will go along with it.

Councilman Cannella said that, given where we are and the consequences of not moving forward, until such time as it can be established that there is a choice, I am not going to jeopardize this Town, no matter what anybody says.

Ms. Wood-Smith agreed that the Board needs to have this information. She continued that, with regard to these condemnation proceedings, the owner of this property has taken the position that the location of this facility and all the impacts that are related to it, and the inability now, without spending millions of dollars to put in infrastructure to support a facility which will render his property valueless as no one would live in that project, his position is that what you are doing is not just taking portions of his property, but the whole property, subjecting the rate payers of this Town to far greater penalties because what you will be doing is paying fair market value for that property.

Councilman Cannella requested that, in order to end this, that the Legal Department review the matter and then make presentation to the Town Board in Executive Session.

Mr. Kraut requested Ms. Wood-Smith to please put all information in writing, with all ancillary documents.

Mr. Malfitano stated that if Ms. Wood-Smith could get a letter from the Department of Health that would permit the Town to delay the project for several months, and that he would be glad to act on that.

Ms. Wood-Smith agreed, stating that her goal is to make the Board aware that there are significant problems with the project, and that the Corporation on which she sits has funding available which might help with the project.

February 9, 2006

MATTERS FOR EXECUTIVE SESSION:

Personnel	11
Advice of Council	2
Acquisition of Real Property	2
Sale of Real Property	1
Settlement of Claims	2
Update on Litigation	1
Lease of Real Property	1

On motion duly made and seconded,
with all members voting in favor, the
Meeting was recessed for Executive Session
at 8:30 PM

On motion duly made and seconded,
with all members voting in favor, the
Meeting was reconvened at 11:25 PM

February 9, 2006

2006 -- 111

AUTHORIZATION TO ADD ADDITIONAL PART-TIME EMPLOYEES IN THE
DEPARTMENT OF PUBLIC WORKS

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to authorize the Commissioner of Public Works to hire two more part-time employees in the General Town Buildings Division of the Department of Public Works.

FURTHER RESOLVED to authorize the Commissioner of Public Works to hire eight more part-time workers in the Highway Division of the Department of Public Works.

FURTHER RESOLVED to forward a copy of this Resolution to the Comptroller and the Commissioner of Public Works.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 112

SETTLEMENT OF CLAIM: FIREMANS' FUND a.s.o.LIPMAN vs TOWN OF HARRISON

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to settle the claim of Fireman's Fund a.s.o. Lipman vs the Town of Harrison, for automobile damage, in the amount of \$2,001.52.

FURTHER RESOLVED that this settlement is subject to the signing a general release by a Representative of the Insurance Company.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 113

AUTHORIZATION TO INCREASE THE CAP ON LEGAL FEES TO \$20,000
IN THE MATTER OF ZELMAN vs THE TOWN OF HARRISON

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to increase the cap of legal fees in the matter of Zelman vs the Town of Harrison to \$20,000 as the costs have now exceeded the \$10,000 cap.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 114

AUTHORIZATION FOR THE SUPERVISOR TO OFFER A POSITION
AS A RECREATION ASSISTANT TO NICHOLAS CALLAGY,
SUBJECT TO HIS PASSING THE APPROPRIATE CIVIL SERVICE EXAM

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to authorize the Supervisor to offer the position of Recreation Assistant to Nicholas Callagy, at Grade V-D, Step 3, at the annual salary of \$48,023, effective February 13, 2006, subject to Mr. Callagy passing the appropriate Civil Service Exam.

FURTHER RESOLVED to forward a copy of this Resolution to the Comptroller and the Superintendent of Recreation.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 115

APPROVAL TO RENEW THE LEASE OF SMSA LIMITED PARTNERSHIP D/B/A
VERIZON WIRELESS FOR A CELL PHONE TOWER LOCATED ON
THE GROUNDS OF THE GLEASON PLACE GARAGE

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to continue negotiating a lease with SMSA Limited Partnership d/b/a Verizon Wireless, consistent with the terms as discussed in executive session.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Comptroller and the Commissioner of Public Works.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

February 9, 2006

2006 -- 116

APPOINTMENT OF BEN DeFONCE AS VETERAN AFFAIRS OFFICER

On motion of Councilman Scappaticci, seconded by Councilman Vetere,

it was

RESOLVED to appoint veteran Ben DeFonce as Veteran Affairs Officer for the Town of Harrison as an annual stipend of \$8,000.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, and the Comptroller.

Adopted by the following vote:

AYES: Councilmen Vetere, Scappaticci, Paladino and Cannella
Supervisor Malfitano

NAYS: None

ABSENT: None

There being no further matters to come before the Board,
the Meeting was declared closed at 11:27 PM.

Respectfully submitted,

Joan B. Walsh
Town Clerk