

December 20, 2007

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 the 20th day of December at 7:00 PM, Eastern Standard Time. All members having received due notice of said meeting:

MEMBERS PRESENT:

Stephen Malfitano Supervisor

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

ALSO ATTENDING

Frank Allegretti Town Attorney
Fred Castiglia Village Attorney
Joseph Latwin Deputy Village Attorney
Jonathan Kraut Deputy Village Attorney
David Hall Chief of Police
Maureen MacKenzie Comptroller
Judy D'Agostinis Director of Purchasing
Steve Surace Fire Marshall
Jim Calandrucci0 Assessor
Bob Wasp Commissioner, Public Works, Town Engineer
Arun Ankola Director, Information Technology

Immediately upon opening the Town Board meeting at 7:20 PM, the Meeting was, on motion duly made and seconded, with all members voting in favor, recessed for Executive Session.

At 8:20 PM, on motion duly made and seconded, with all members voting in favor, the Meeting was re-convened.

December 20, 2007

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TRIBUTE GIVEN TO SUPERVISOR STEPHEN MALFITANO
AS THIS IS HIS LAST TOWN BOARD MEETING AS SUPERVISOR

Ken Shuler, President of the Rotary Club, spoke in praise of the contributions of Mr. Malfitano during his six years in office.

Ada Angarano, President of the Chamber of Commerce, stated that in her first year as President, she had first asked Mr. Malfitano that he Town improve the Christmas decorations on the streets, and that he had agreed. She continued that in her second year, she had asked Mr. Malfitano for funds to operate the Chamber office, and he agreed. Mrs. Angarano praised Mr. Malfitano for his many accomplishments during his years in office.

Lori Wilson, President of the West Harrison Neighborhood Association said that she considered Mr. Malfitano to be the godfather of their Association, and thanked him for his many accomplishments in West Harrison and elsewhere.

Helen Pesce, representing Denise DiBiasi, the President of the Beautification Committee and Foundation, also praised Mr. Malfitano for his service to the Town, for his accomplishments, and for his support in the area of the Beautification of the Town.

The groups then presented Supervisor Malfitano with a Certificate of Appreciation from the four organizations.

Supervisor Malfitano thanked everyone for their good wishes, saying that all know how much he loves Harrison. He continued that he was moved emotionally by the speeches, adding that all the people had given him so much. He added that he had exhausted himself (as Supervisor) because he cared so much (for the Town.) He again thanked everyone for their good wishes.

December 20, 2007

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TRIBUTE TO COUNCILMAN BOB PALADINO
AT THIS IS HIS LAST MEETING AS A COUNCILMAN

Activist Lucille Held spoke in praise of Councilman Robert Paladino, as this was also Mr. Paladino's final meeting. She thanked him personally for being a very "down-to-earth" and positive person who attacked every issue he did not think was right. She added that she personally appreciated him, and knew that many others did so also, and she looked forward to the time when he again was seated on the Town Board.

Councilman Paladino replied that it had been a privilege to serve the Town for ten and a half years as a Councilman, and for an additional five years on the School Board. He thanked everyone for their good wishes.

December 20, 2007

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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 report:

Monthly report from the New Rochelle Humane Society for November 2007.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 518 -- a

PUBLIC HEARING RE: DELETION OF CHAPTER 130 OF THE TOWN CODE,
ENTITLED "EROSION AND SEDIMENT CONTROL" AND REPLACING IT WITH
A NEW SECTION 130 ENTITLED "STORMWATER MANAGEMENT AND
EROSION & SEDIMENT CONTROL"

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

Resident Robert Porto asked if the latest modifications of this Law had been finalized. He stated that he tried to obtain a copy of the Law last week and was upset when he was told the Law was going to be modified. Attorney Jonathan Kraut replied he had a copy with him, which could be reviewed. He added that there had been modifications, but he could briefly go over those changes if it was desired. He also stated that this Law was based upon a state and federal mandate which municipalities had to adopt and that, at the last meeting, Mike Ritchie, one of the consultants on this Law, came to explain the Law and to answer questions from the Board or the public. He added that the local law followed the model law.

Mr. Porto replied that he was more concerned with the process than the changes, that the Law should be finalized (before a Public Hearing is scheduled), that people should be given the opportunity to see it, perhaps 30 days, and then it should be opened for the Public Hearing for comments and then (after that) the Hearing can be closed.

Councilman Paladino then asked attorney Jonathan Kraut what the Law's triggers were.

Mr. Kraut explained the two triggers as:

Condition A, being all land and development activities being 20,000 square feet or more, and

Condition B, being activities with more than 500 square feet up to 20,000 square feet.

In response to a question from Councilman Paladino, Acting Town Engineer Bob Wasp stated that this Law would address any existing condition that results in a water quality impact resulting from storm water.

No one else spoke for or against the matter.

On motion duly made and seconded, with all members voting in favor, the Hearing was closed.

December 20, 2007

2007 -- 518 -- b

LEAD AGENCY DESIGNATION AND NEGATIVE DECLARATION RESOLUTION
CONCERNING LOCAL LAW NO. 6 of 2007
RE: DELETING CHAPTER 130 OF THE TOWN CODE,
ENTITLED “EROSION AND SEDIMENT CONTROL” AND
REPLACING IT WITH A NEW SECTION 130 ENTITLED
“STORMWATER MANAGEMENT AND EROSION & SEDIMENT CONTROL”

WHEREAS, the Town Board of the Town of Harrison has before it a proposed Local Law No. 6 of 2007 which law would delete the title and contents of Chapter 130 entitled {Erosion and Sediment Control} and replacing the title and contents of Chapter 130 to the Town/Village Code entitled “Stormwater Management and Erosion & Sediment Control” , and

WHEREAS, a copy of the proposed law, an Environmental Assessment Form and a draft Negative Declaration were presented to the Town Board,

NOW THEREFORE, BE IT RESOLVED, that pursuant to 6 N.Y.C.R.R. Part 617, the regulations implementing the provisions of the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, the Town Board hereby designates the Town Board of the Town of Harrison as the lead agency pursuant to 6 N.Y.C.R.R. §617.6(b), and be it further

RESOLVED, that the Town Board hereby determines that the proposed action is an Unlisted action that will have no adverse environmental impacts or that the identified adverse environmental impacts will not be significant for the reasons set forth in the accompanying Environmental Assessment Form and Negative Declaration Form, and be it further

RESOLVED, that the Town Board issues a Negative Declaration of environmental significance in conformity with SEQRA concerning Local Law No. 6 of 2007, and be it further

RESOLVED, that the Supervisor is authorized to take such further steps as might be necessary to discharge the Town Board’s responsibility as lead agency for this action.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 518 -- c

ADOPTION OF LOCAL LAW #6 OF 2007:
STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL
CHAPTER 130 STORMWATER LOCAL LAW
EROSION AND SEDIMENT CONTROL

- § 130-1 Title
- § 130-2 Statutory Authorization
- § 130-3 Findings of Fact
- § 130-4 Purpose
- § 130-5 Statutory Authority
- § 130-6 Exemptions
- § 130-7 Definitions
- § 130-8 Stormwater Pollution Prevention Plans
- § 130-9 Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control
- § 130-10 Maintenance, Inspection and Repair of Stormwater Facilities
- § 130-11 Severability and Effective Date
- § 130-12 Subdivision Regulation Amendment
- § 130-15 Site Plan Review Regulation Amendment
- § 130-16 Erosion & Sediment Control Law Amendment
- § 130-17 Administration and Enforcement

Local Law for Stormwater Management
And Erosion & Sediment Control

A Local Law of the Town of Harrison, Local Law No. 6 of the year 2007.

Be it enacted by the Town Board/Village Board of Trustees of the Town of Harrison as follows:

Section 130-3 Findings of Fact

It is hereby determined that:

Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;

Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;

Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;

Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

Substantial economic losses can result from these adverse impacts on the waters of the municipality;

Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

Section 130-4 Purpose

The purpose of this local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in Section 130-3 hereof. This local law seeks to meet those purposes by achieving the following objectives:

(A) Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;

(B) Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

(C) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;

(D) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

(E) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

(F) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

Section 130-5 Statutory Authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Town Board/Village Board of Trustees of Harrison, has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the Town of Harrison and for the protection and enhancement of its physical environment. The Town Board of Harrison may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

Section 130-6 Exemptions

The following activities are exempt from review under this law.

(A) The construction of an addition to an existing structure or any land-disturbing activity that involves less than 500 square feet. However, any land-disturbing activity of any area shall follow the applicable soil erosion BMP provided by the Town/Village.

(B) Routine Agricultural activity as defined in this local law.

(C) Routine maintenance activities that are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

(D) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.

(E) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Harrison and all infrastructure has been installed in accordance therewith, on or before the effective date of this law.

(F) Land development activities for which a building permit has been approved on or before the effective date of this law.

(G) Cemetery graves.

(H) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(I) Emergency activity immediately necessary to protect life, property or natural resources.

(J) Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family and or Landscaping and horticultural activities in connection with an existing structure.

The Zoning Law is hereby amended to include Article ____, a new supplemental regulation titled Stormwater Control.

Section 130-7 Definitions

The terms used in this local law or in documents prepared or reviewed under this local law shall have the meaning as set forth in this section.

Agricultural Activity - the activity of an active farm operation (as defined in Agriculture and Markets Law) including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

Applicant - a property owner or agent of a property owner who has filed an application for a land development activity.

Building - any permanent structure having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 120 square feet of area.

Channel - a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing - any activity that removes the vegetative surface cover.

Dedication - the deliberate appropriation of property by its owner for general public use.

Department - the New York State Department of Environmental Conservation

Design Manual - the *New York State Stormwater Management Design Manual*, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

Developer - a person who undertakes land development activities.

Erosion Control Manual - the most recent version of the "New York Standards and

Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book”.

Grading - excavation or fill of material, including the resulting conditions thereof.

Impervious Cover - those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

Industrial Stormwater Permit - a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Infiltration - the process of percolating stormwater into the subsoil.

Jurisdictional Wetland - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land Development Activity - construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than five thousand (5000) square feet or activities disturbing less than five thousand (5000) square feet of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules. This does not include construction activities that disturb between five thousand (5000) square feet and one (1) acre of land where no impervious cover is constructed or reconstructed within the disturbed area.

Land Disturbing Activity – Any change to land which may result in soil erosion from water or wind and the movement of soil into water or onto lands, alteration of a drainage system, or increased runoff of waters, including, but not limited to, clearing, grading, excavating, transporting and filling of land of equal to or greater than five thousand (500) square feet or activities disturbing less than five thousand (500) square feet of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules. This does not include construction activities that disturb between five thousand (500) square feet and one (1) acre of land where no impervious cover is constructed or reconstructed within the disturbed area.

Landowner - the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance Agreement - a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

Nonpoint Source Pollution - pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Phasing - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

Pollutant of Concern - sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

Project - land development activity

Recharge - the replenishment of underground water reserves.

Sediment Control - measures that prevent eroded sediment from leaving the site.

Sensitive Areas - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES General Permit for Construction Activities GP-02-01 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards

Stabilization - the use of practices that prevent exposed soil from eroding.

Stop Work Order - an order issued which requires that all construction activity on a site be stopped.

Stormwater - rainwater, surface runoff, snowmelt and drainage

Stormwater Hotspot - a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

Stormwater Management - the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

Stormwater Management Facility - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

Stormwater Management Officer - Town/Village Engineer or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

Stormwater Management Practices (SMPs) - measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

Stormwater Pollution Prevention Plan (SWPPP) - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

Stormwater Runoff - flow on the surface of the ground, resulting from precipitation

Surface Waters of the State of New York - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

Watercourse - a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

Waterway - a channel that directs surface runoff to a watercourse or to the public storm drain.

Section 130-8 Stormwater Pollution Prevention Plans

A. Stormwater Pollution Prevention Plan Requirement

No application for approval of a land development or land disturbing activity shall be reviewed until the appropriate municipal official and/or board has received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law.

B. Contents of Stormwater Pollution Prevention Plans

All SWPPPs shall provide the following background information and erosion and sediment controls:

- (1) Background information about the scope of the project, including location, type and size of project;
- (2) Site map/construction drawing(s) for the project at a scale of no smaller than 1"=100', including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
- (3) Description of the soil(s) present at the site;
- (4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
- (5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (6) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
- (7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

- (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (10) Temporary practices that will be converted to permanent control measures;
- (11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (13) Name(s) of the receiving water(s);
- (14) Delineation of SWPPP implementation responsibilities for each part of the site;
- (15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
- (16) Any existing data that describes the stormwater runoff at the site.

C. Land development activities and land disturbing activity as defined in Section 130-7 and meeting Condition A below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Condition A below as applicable:

Condition A - All land development activities disturbing 20,000 square feet or more acres of land where impervious cover is constructed or reconstructed within the disturbed area, and all land development activities disturbing 20,000 square feet or more acres of land where no impervious cover is constructed within the disturbed area but the land development activity results in a change in hydrology by increasing the post-development discharge rate.

SWPPP Requirements for Condition A:

- (1) Description of each post-construction stormwater management practice;
- (2) Site map/construction drawing(s) showing the specific location(s) and size(s)

of each post-construction stormwater management practice;

- (3) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
- (4) Comparison of post-development stormwater runoff conditions with pre-development conditions;
- (5) Dimensions, material specifications and installation details construction stormwater management practice;
- (6) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
- (7) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
- (8) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Section 130-10 of this local law.

SWAPP Requirements for Condition B - All land disturbing activities of more than 500 square feet and less than one half acre.

All information in Section 130-8 of this local law;

- (2) Each application shall be accompanied by the following, unless specifically waived by the Town/Village Engineer based on the scope of the project:
 - (a) A vicinity map.
 - (b) A stormwater management, erosion, sediment and pollution control plan for the site showing drainage patterns, on-site stormwater appurtenances, wetlands, the one-hundred-year floodplain, and the proposed use of the site, including areas of excavation, grading and filling.
 - (c) Stormwater management improvements, including calculations, designs and special measures regarding safety and maintenance operations.
 - (d) Stormwater conveyance system, including plans, designs and materials to be used for improvements and erosion control in channel sections of stormwater conveyance systems and erosion control measures at culvert inlets and outfalls.

(e) The above plans shall comply with the guidelines and specifications of the most recent editions of New York State Stormwater Management Design Manual and the New York Standards and Specifications for Erosion and Sediment Control and include:

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to adopt as adopt Local Law #6 of 2007 for stormwater management and erosion and sediment control a new Chapter 130 in the Town Code, entitled Stormwater, Erosion and Sediment Control

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 519 -- a

PUBLIC HEARING: PURSUANT TO ARTICLE 2, SECTION 10 AND ARTICLE 3,
SECTION 20 OF THE MUNICIPAL HOME RULE, A NEW CHAPTER 131 OF THE
TOWN/VILLAGE CODE ENTITLED "ILLICIT DISCHARGE"
BY LOCAL LAW NO. 7 OF 2007.

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

Attorney Jonathan Kraut gave a brief summary of the Law. He began by stating this Law deals with MS4 which stands for Separate Storm Sewer Systems. The purpose of this Law is to comply with the National Pollutant Discharge Elimination System. It is being mandated by the state and must be approved in some form by January 8, 2008. Mr. Kraut continued to say that many other communities have adopted this law and it has been very effective.

Resident Lucille Held discussed the importance of educating our community about this law so residents will know how to comply.

Commissioner Wasp replied by saying (his Department) intends to have a public information session on this subject and will answer any questions plus a showing of an informative video.

No one else spoke for or against the proposed Law.

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

December 20, 2007

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DESIGNATION OF THE TOWN BOARD AS LEAD AGENCY UNDER SEORA
ADOPTION OF A NEGATIVE DECLARATION UNDER SEORA

WHEREAS, the Town Board of the Town of Harrison has before it a proposed Local Law No. 7 of 2007 which law would add a new Chapter 131 entitled "Illicit Discharge", and

WHEREAS, a copy of the proposed law, an Environmental Assessment Form and a draft Negative Declaration were presented to the Town Board,

NOW THEREFORE, BE IT RESOLVED, that pursuant to 6 N.Y.C.R.R. Part 617, the regulations implementing the provisions of the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, the Town Board hereby designates the Town Board of the Town of Harrison as the lead agency pursuant to 6 N.Y.C.R.R. §617.6(b), and be it further

RESOLVED, that the Town Board hereby determines that the proposed action is an Unlisted action that will have no adverse environmental impacts or that the identified adverse environmental impacts will not be significant for the reasons set forth in the accompanying Environmental Assessment Form and Negative Declaration Form, and be it further

RESOLVED, that the Town Board issues a Negative Declaration of environmental significance in conformity with SEQRA concerning Illicit Discharges, and be it further

RESOLVED, that the Supervisor is authorized to take such further steps as might be necessary to discharge the Town Board's responsibility as lead agency for this action.

On motion of Councilman Cannella, and seconded by Councilman Vetere, it was adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

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ADOPTION OF A NEW CHAPTER 131 OF THE TOWN CODE
ENTITLED "ILLICIT DISCHARGE, AS LOCAL LAW #7 OF 2007"

On motion of Councilman Cannella, seconded by Councilman Vetere,

it was

RESOLVED to adopt Local Law No. 7 of 2007, Pursuant to Article 2, Section 10 and Article 3, Section 20 of the Municipal Home Rule, a new Chapter 131 of the Town/Village Code entitled "Illicit Discharge" as follows:

Chapter 131: ILLICIT DISCHARGE

- § 131-1 Purpose
- § 131-2 Definitions
- § 131-3 Applicability
- § 131-4 Responsibility for Administration
- § 131-5 Severability
- § 131-6 Ultimate Responsibility
- § 131-7 Discharge Prohibitions
- § 131-8 Suspension of MS4 Access
- § 131-9 Industrial or Construction Activity Discharges
- § 131-10 Monitoring of Discharges
- § 131-11 Requirements to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices
- § 131-12 Watercourse Protection
- § 131-13 Notification of Spills
- § 131-14 Enforcement
- § 131-15 Appeal of Notice of Violation
- § 131-16 Enforcement Measures After Appeal
- § 131-17 Cost of Abatement of the Violation
- § 131-18 Injunctive Relief
- § 131-19 Appeal of Notice of Violation
- § 131-20 Violations Deemed A Public Nuisance
- § 131-21 Criminal Prosecution
- § 131-22 Remedies Not Exclusive
- § 131-23 Adoption of Law

Section 131-1 Purpose/Intent.

The purpose of this law is to provide for the health, safety, and general welfare of the citizens of the Town/Village of Harrison through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- . To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

Section 131-2 Definitions.

For the purposes of this law, the following shall mean:

Authorized Enforcement Agency. employees or designees of the director of the municipal agency designated to enforce this law.

Best Management Practices (BMPs). schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 5 acres or more. Beginning in March 2003, NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential

hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 131-3 Applicability.

This law shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Section 131-4 Responsibility for Administration.

The Town/Village Engineer shall administer, implement, and enforce the provisions of this law. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

Section 131-5 Severability.

The provisions of this law are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this law.

Section 131-6 Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this law are minimum standards; therefore this law does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 131-7 Discharge Prohibitions.

Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this law: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Section 131-8 Suspension of MS4 Access.

Suspension due to Illicit Discharges in Emergency Situations.

The Town/Village Engineer may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

Section 131-9 Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town/Village Engineer prior to the allowing of discharges to the MS4.

Section 131-10 Monitoring of Discharges.

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

1. The Town/Village Engineer shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Facility operators shall allow the Town/Village Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
3. The Town/Village Engineer shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Town/Village Engineer has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town/Village Engineer and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Town/Village Engineer access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
7. If the Town/Village Engineer has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Section 131-11 Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

Town Board and Planning Board will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the

discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Section 131-12 Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 131-13 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town/Village Engineer within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 131-14 Enforcement.

A. Notice of Violation.

Whenever the Town/Village Engineer finds that a person has violated a prohibition or failed to meet a requirement of this law, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;

4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Section 131-15 Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

Section 131-16 Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, 10 within days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 131-17 Cost of Abatement of the Violation.

Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the Town by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 9% percent per annum shall be assessed on the balance beginning on the 11th day following discovery of the violation.

Section 131-18 Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this law. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Section 131-19 Appeal of Notice of Violation.

In lieu of enforcement proceedings, penalties, and remedies authorized by this law, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 131-20 Violations Deemed A Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this law is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 131-21 Criminal Prosecution.

Any person that has violated or continues to violate this law shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$250 dollars per violation per day and/or imprisonment for a period of time not to exceed 15 days.

The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 131-22 Remedies Not Exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Section 131-23 Adoption of Law

This law shall be in full force and effect days after its final passage and adoption. All prior laws and parts of laws in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this 20th day of December, 2007, by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 520

PUBLIC HEARING: RE: A LOCAL LAW PROVIDING FOR THE
ADMINISTRATION AND ENFORCEMENT OF THE NEW YORK STATE
UNIFORM FIRE PREVENTION AND BUILDING CODE

Attorney Jonathan Kraut stated that the Law Department was working with the Building Department and the Fire Marshal to make revisions and wishes to re-open this hearing at a later date.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to adjourn this Hearing to the February 7, 2008 Town Board meeting.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys, the Fire Marshal and the Building inspector.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 521

CONTINUATION OF THE PUBLIC HEARING RE: APPLICATION OF
LAN PAM REALTY, INC. FOR A SPECIAL EXCEPTION USE PERMIT TO
CONSTRUCT SIX (6) APARTMENT UNITS

On motion of Councilman Cannella, seconded by Councilman Vetere,

it was

RESOLVED to continue until January 17th (later amended to January 24th) the Public Hearing RE: Application of Lan Pam Realty, Inc. for a Special Exception Use Permit to construct six (6) new apartments above the existing restaurant at 307 Halstead Avenue.

FURTHER RESOLVED to forward a copy of this Resolution to the Town Attorneys and the Building Inspector and owners of Lan Pam Realty, Inc.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 522

CONTINUATION OF THE PUBLIC HEARING RE: TO DETERMINE THE
AMOUNT AND EXTENT OF REAL PROPERTY -- PART OF LOT 74 IN BLOCK
611 -- ALSO KNOWN AS 7 MEADOW LANE - REQUIRED AS AN EASEMENT
FOR STORM WATER AND DRAINAGE INFRASTRUCTURE IMPROVEMENTS IN
THE VICINITY OF MEADOW LANE

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

The Town Attorney's office had arranged that a Court Stenographer be present to take a verbatim record of this Hearing.

Attorney Kraut stated the legal framework for the Hearing, and put various documents into the record, with the documents available in the Town Clerk's office: (A) Resolution setting the date of the Hearing for December 20, 2007; (B) Notice of Publication; (C) Affidavit of publication from the Journal News; (D) Letter sent to owner of the property regarding this proposed condemnation with an offer to discuss and negotiate; (E) Letter sent and received on December 19, 2007 by Reda Schwamm and Associates, LLP, attorneys for the property owners; penned by David Schwamm which makes a request that due to medical condition of the property owner (eye surgery) that this Hearing be postponed; and (F) A drawing, single page, prepared by the Town's Engineering Department concerning the storm water district germane to this application and (G) an outline of the drainage area affected, and the easement being proposed. Mr. Kraut further stated that this condemnation is for an easement by the Town for storm water infrastructure, adding that it is not for fee title of the property.

Acting Town Engineer and Commissioner of Public Works Bob Wasp explained the need for the easement. He stated that the Board has in front of them is a description of the nine parcels adjacent to Meadow Lane which have made a petition to be included in the District. Mr. Wasp pointed out that the first 500 feet of Meadow Lane is a town road, but the remainder is a private road. The drawing shows the parcels in the district, and the location on the Garfield property of the proposed easement. He further stated that the watershed is approximately 20 acres, and the properties in question are about 26 acres. Mr. Wasp then showed on the map where the waters drain, to the low point of the area which is on Meadow Lane, and that is the heart of the problem. He continued that what happens, is that water not only gathers in this location but in the winter also freezes there. He also stated that because it becomes an emergency condition, DPW is called either to remove ice or to deal with water conditions. His Department then assessed the drainage area, to see how to deal with the problem. It was determined that the best method, due to the topography of the area, is to cross one property and lead the water to the town drainage system on Star Farm Road. He added that a drainage basin would not work as you have to work with gravity and a basin is not feasible. He concluded by stating that this is the most effective as well as cost efficient method to solve this serious problem.

The discussion continued, with questions and answers by the Attorney Kraut and Mr. Wasp, as well as Board members. All is recorded in the Stenographic Record.

Mr. David Schwamm spoke on behalf of the Garfields, and discussed the present situation, adding that a drainage cistern was put across the street to collect the water pooling on the street, with grates on the top. He continued with a history of the remediation efforts, adding that the problems do not come from his clients' property. He further stated that there should be an investigation of installing a holding pond on the Roberts' property, and a Master Plan for drainage for the area developed. He further stated that his clients' are now in litigation with the Roberts. Again, his complete comments are recorded in the Stenographic Record.

Supervisor Malfitano stated that there had been repeated efforts to meet with the Garfields and address these issues, but they were unsuccessful. He then asked Mr. Wasp to refute some of the issues raised by Mr. Schwamm.

Councilman Paladino asked if there were to be a retention. The following homeowners spoke of the urgent need for this easement to prevent the flooding and, in winter, the ice build-up on Meadow Lane:

Barry Finkelstein, # 9 Meadow Lane, made reference to a berm on the Garfields property which was contributing to the flooding problem. He added that the only losses so far have been material ones – at least two cars have been totaled due to being stuck in the water, but it is a fact that there is no chance a police car, or ambulance or fire truck being able to get past this “pond.” He referred to the advanced ages of his neighbors and said that it is the right of the property owners to have safe conduct on their street.

Supervisor Malfitano agreed, stating that in recent storm events, there had been problems with access in some instances (due to flood waters.)

Bruce Roberts, Meadow Lane, a resident for 33 years, said the water (in question) runs downhill – there is no question about that, and there is nothing anyone can do about it. He further stated that there is a report that the water has done so for over 1000 years, and it does not come just from his property, adding that he had offered to construct a “trap” but was told that this would not work. Mr. Roberts further stated that a plan had been worked out with the Town, but before it could be completed, he had received a “cease and desist” order from the Supreme Court, and that case is still pending. He added that the Board of Health has checked his property twice, and there isn't any fecal matter coming from his property, which might be due to the deer or rabbits in the area. He added that his property is the low point and, when there is excessive water, his whole front yard is covered – that it (eventually) runs off. He further said that right now his front yard is a skating rink.

David Friedwald, 17 Meadow Lane, resident since 1993, pointed out that the letter from the Garfields' attorney -- Exhibit E -- is just a stall tactic, that the Garfields have never made any attempt to speak to him or other residents. He praised Supervisor Malfitano for his assistance in sending the Public Works employees to chip away the ice on various

occasions. He continued that on one occasion the pipes in his house burst, and the fire truck could not get through, adding that once a UPS truck was stuck in one and a half feet of water. The situation is beyond bad. He also pointed out that water runs downhill, and nothing can stop that. He added that the pond on the Garfields' property was created by the previous owner. Mr. Friedwald added that on one occasion Mr. Garfield and his son had come to his house and said to him that perhaps a pipe could be run through their property to eliminate (the water problem), as there were so many mosquitoes. Mr. Friedwald said that it has been seven years that they have been fighting this and, in the right to safe passage, he asked the Board to act quickly, and do what is right.

Mrs. Marcella Kahn, at 11 Meadow Lane for 28 years, wants to go on record to strongly urge this Town Board of the Town of Harrison to approve the engineering plan as presented by Mr. Wasp.

Marcia Moger 13 Meadow Lane, for 30 years. She stated that she is not able to get to her own property when the water rises, but has to sleep at her daughter's home, adding that it is the kindness of Mr. Cole who allows them to go through his property that her husband has been able to get to work (when the water blocks the street.) Another day she donned boots and a blowup boat. On another occasion, the fire department had to be called when her car was stuck in the water – they could not move the car and she had to be carried out. Mrs. Moger concluded by stating that it is a horrible feeling when she can not get to her home or cannot get out, cannot drive and can't even walk out.

Attorney David Schwamm spoke on behalf of the owners of the property where the easement will be located, the Garfields, asking that the Hearing be postponed. He stated that with reference to the eye surgery for Mr. Garfield, he has had four or five several surgeries and is undergoing more. He pointed out that it is not a steep slope from the roberts' property to the Garfield's property – over a distance of 100 feet, it might change by one or two inches. Mr. Schwamm then requested that the Hearing be continued, and that he be provided with all the engineering reports, to be given to their expert for review, to see what would be a solution that his client might be amenable to, and further that the Town Attorney and the Town Engineer re-visit the designation of the pond (on the Garfield property) as a wetland as he did not believe that it met the Town's criteria. Mr. Schwamm further pointed out that the pond had been created by the previous owner at the direction of the Town and then designated as a wetland.

Mr. Malfitano apologized to the residents for the delays.

Robert Porto asked the area of the water shed. Mr. Wasp said that the drainage area was about 20 acres. Mr. Porto also said that eminent domain should be the last resort, and asked if (the issue) could not be worked out.

Barry Finkelstein state that this is the last resort, that they have been working on the matter for ten years and eminent domain is the last resort.

Commissioner Wasp said that there is danger in this situation, that his men had been in danger when they went out to clear the street, as well as danger to the residents. adding that this is a good solution, the best solution and it is very efficient.

Chief of Police David Hall was called by the town's attorney, and asked if he was familiar with the conditions on the street, and did this cause a danger or hazard to these residents in terms of the ability of the Police Department, whether it be water or ice, to deliver emergency services to these residents.

Chief Hall replied "Yes, it is a hazardous situation and needs to be addressed."

On motion of Councilman Cannella, seconded by Councilman Vetere,

it was

RESOLVED to direct Commissioner Wasp and/or his designee to perform the surveying work necessary in order to move forward on this violation.

FURTHER RESOLVED to continue until January 3, 2008 (later amended to January 10, 2008) the Public Hearing RE: To determine the amount and extent of Real Property – Part of Lot 74 in Block 611 – also known as 7 Meadow Lane – required as an easement for stormwater and drainage infrastructure improvements in the vicinity of Meadow Lane.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

On motion duly made and seconded, with all members voting in favor, the Meeting was recessed for a short break.

On motion duly made and seconded, with all members voting in favor, the Meeting was resumed.

In The Matter Of:

TOWN BOARD MEETING of the TOWN OF HARRISON

HEARING

December 20, 2007

MERRILL LEGAL SOLUTIONS

25 West 45th Street - Suite 900

New York, NY 10036

PH: 212-557-7400 / FAX: 212-692-9171

HEARING - Vol. 1

RECEIVED
LAW DEPT.
TOWN-VLG. OF HARRISON, NY
2008 MAR 31 A 10:38

TOWN BOARD MEETING OF THE TOWN OF HARRISON

PUBLIC HEARING

Re: The purpose of determining the amount and extent of the real property known as Block 611, Lot 74 and more commonly known as 7 Meadow Lane, Purchase, NY. The condemnation and easement necessary for storm water and drainage infrastructure improvements in the vicinity of Meadow Lane.

December 10, 2007
8:15 p.m.
1 Heineman Place
Harrison, New York

PRESENT: MAYOR STEVE MALFITANO, Chairperson
JOAN B. WALSH, Town Clerk
ROBERT C. PALAFINO, Councilman
PATRICK A. VETERE, Councilman
JOE CANELLA, Councilman-Trustee
TOM SCAPPATICCI, Councilman-Trustee
JONATHAN E. KRAUT, Deputy Village Attorney

1 be acquired for such project.

2 What I'd like to do briefly, is walk
3 through the purpose of the hearing and put some
4 documents into the record. All documents put in
5 the record will be made available at the Town
6 Clerk's Office during normal business hours for
7 review.

8 Notice to this hearing was
9 established pursuant to Section 202 under Eminent
10 Domain Proceedings Law. First in the record is
11 Exhibit A, which is Resolution 494 adopted by
12 this Board which resolved to set the date of the
13 hearing for December 20th, here at this time.
14 Exhibit B is the Notice of Public

15 Hearing which was duly posted as
16 required by law.

17 Exhibit C is the affidavit of
18 publication from the Journal News which attests
19 to the fact that the notice of public hearing was
20 duly published in accordance with the statute.

21 Exhibit D is a letter which was sent
22 to the owner of the property regarding this
23 proposed condemnation, as well as offering an
24 opportunity to discuss and negotiate regarding
25 the Town's need in this regard. That is a letter

1 MAYOR MALFITANO: Public hearing
2 number five, public hearing with regard to a
3 request to establish, and we have already
4 established, a special district for the residents who
5 live in Purchase on 7 Meadow Lane for the town to effect
6 condemnation of an easement through private property
7 for storm water and drainage improvement to be made to
8 benefit the special district that's been created.

9 I need a motion to open the hearing.

10 COUNCILMAN CANNELLA: Motion.

11 COUNCILMAN SCAPPATICCI: Second.

12 MAYOR MALFITANO: All in favor?
13 (Chorus of Ayes)

14 MR. KRAUT: If I could, this hearing
15 is pursuant to the Eminent Domain proceedings
16 Section 201 of the Eminent Domain proceedings law,
17 which sets forth that accept as provided herein, prior
18 to the acquisition the Condemner, in order, to
19 inform the public and review the public use be
20 served by a proposed public project and the
21 impact on the environment and residents of the
22 locality where such project will be constructed
23 shall conduct a public hearing in accordance with
24 the provision of this article at a location
25 reasonably proximate to the property which may

1 dated December 7th from the Town Attorney's
2 Office, with an attachment and again is Exhibit
3 D.

4 Exhibit E is a letter that was sent
5 and received on December 19th by the law firm of
6 Reda Schwan and Associates LLP. This was a letter
7 penned by David S. Schwan from the property owner
8 which the Board has received a copy of. Amongst
9 other things, this letter makes a request that
10 based upon a medical condition concerning eye
11 surgeries, that the property owner is unable to
12 participate this evening, and therefore, it
13 requests that this hearing be held open or
14 adjourned for further input.

15 The last two exhibits are Exhibit F,
16 which is a drawing, single page, prepared by the
17 Town of Harrison Engineering Department
18 concerning the storm water district germane to
19 this application.

20 Last exhibit is Exhibit G, this exhibit
21 outlines the drainage basin affected and the
22 easement that is being proposed.

23 For the record this condemnation is
24 for an easement by the Town to accommodate storm
25 water infra-structure. It is not for fee title of

2 MR. WASP: The size of the basin and for
 3 the properties. It just wouldn't work you have to work
 4 with gravity where water flows and the available land,
 5 and these are developed lots. So the basin alternative
 6 is not viable.
 7 COUNCILMAN PALADINO: Bob, for purposes
 8 of where pointing is the low point that you're
 9 pointing immediately adjacent to where you're proposing
 10 the easement to be started.
 11 MR. WASP: Yes, this is the low point
 12 and the easement would run across here, across
 13 that parcel, connecting in to the drainage system on
 14 Star Farm Road.
 15 COUNCILMAN VETERE: You would put a catch
 16 basin on both sides of that road at the low, Bob?
 17 MR. WASP: Yes, we want to be able to
 18 catch the water.
 19 COUNCILMAN VETERE: That's enough to
 20 carry the water through to Star Farm Road?
 21 MR. WASP: It's size of the pipe is
 22 the determining factor, on the slope.
 23 COUNCILMAN VETERE: What size is there
 24 now?
 25 MR. WASP: Right now inadequate, not

1 a formalized piping system. There was some kind
 2 of piping system in the roadway, I think it was an
 3 eight inch diameter pipe, under the road that that
 4 connected on to this parcel, but there was not a clear
 5 through piping of any sort at this time.
 6 COUNCILMAN VETERE: So then what you are
 7 saying, it's necessary to condemn the property so we
 8 can increase the size of the pipe put catch basins on
 9 both sides of Meadow Lane into Star Farm Road, is
 10 relevant to what you're saying?
 11 MR. WASP: The only viable
 12 alternative to solve this problem is to put a
 13 drainage system in with catch basins consisting
 14 of a drain that would go across this property.
 15 It would relieve the emergency conditions that
 16 occur here. It can be designed to the detail to
 17 meet normal standards for storm drains, and it is
 18 the most cost efficient way to do this, as well.
 19 COUNCILMAN PALADINO: And it's storm
 20 water only?
 21 MR. WASP: We are talking storm water
 22 pumping in volume, it doesn't -- it is all by gravity
 23 flow.
 24 COUNCILMAN PALADINO: How deep below the
 25 ground will the storm water be, the piping?

1 MR. WASP: The pipe will be shallow
 2 here, that's part of the design. Designing it to
 3 have enough cover material, generally about a
 4 foot or foot and a half to cover which is about
 5 the minimum you would want to go with enough.
 6 pitch for the water to flow into the
 7 system down here. So it really is a very good
 8 solution that would relieve a serious problem
 9 that exists on the street and the residents have
 10 been subjected to for many years.
 11 MR. KRAUT: Mr. Wasp, is it correct
 12 that the proposed permanent easement requested or
 13 believed by the Engineering Department to be
 14 the minimum necessary is 15 feet in width?
 15 MR. WASP: Yes.
 16 MR. KRAUT: Is it correct that you
 17 also suggested that there be a wider
 18 construction easement to allow the installation
 19 of that infra-structure and/or its repair or
 20 placement of 35 feet?
 21 MR. WASP: Yes, that space would be
 22 needed for construction equipment, just
 23 during the construction as a temporary easement.
 24 COUNCILMAN PALADINO: Who are the owners
 25 of the Meadow Lane at the point where it becomes a

1 private road? Is it owned by a homeowner's
 2 association?
 3 MR. KRAUT: Excuse me, if a member of the
 4 public wishes to speak they will have to speak in turn.
 5 Mr. Wasp, I believe the question was in connection with
 6 the ownership of that portion of the street bed --
 7 MR. WASP: My understanding of the
 8 ownership of the street is the adjacent parcel,
 9 that the parcel runs through the center of the street.
 10 So it is truly a private road.
 11 COUNCILMAN PALADINO: Does the property
 12 which the easement is going through, does that in
 13 turn own a portion of Meadow Lane?
 14 MR. WASP: I will just refresh my
 15 memory looking at the map, but I do believe
 16 that's true. I believe that is true.
 17 MR. KRAUT: Frankly, I would add that
 18 even with a parcel abutting a private
 19 right-of-way, depending on the manner in which
 20 title is held and or deeds conveyed, that abutting
 21 parcel may own part, all, or indeed none of the
 22 roadbed, but we certainly can let you know about that.
 23 COUNCILMAN PALADINO: I just want to
 24 understand where you're intending put a catch
 25 basin on the Meadow Lane side which is where the

1 result of anything the Garfields have done or not done.
 2 The problems are the water coming from the
 3 Robert's property. And prior to any Eminent
 4 Domain, taking from my client's property, there
 5 should be and should be made available to my
 6 clients a study of whether a holding pond or
 7 other thing can be installed on the Robert's
 8 property. It's several acres, actually larger
 9 than the Garfield property, which would help hold
 10 the pond water so it would be controlled at a
 11 controlled pace.
 12 **Second**, my clients are in litigation
 13 with the Roberts, and tonight is the first that I
 14 have actually heard of the proposed sewer system.
 15 There was a court agreement that any proposed
 16 sewer district petition was to be provided to the
 17 Garfields and myself. We were never provided
 18 with any petition, so tonight I haven't seen it.
 19 **COUNCILMAN PALADINO:** This matter has
 20 been adjourned for at least 10 times.
 21 **COUNCILMAN CANNELLA:** I just can't
 22 understand.
 23 **COUNCILMAN PALADINO:** With all due
 24 respect, Mr. Schwan.
 25 **MR. SCHWAN:** How could it be adjourned

1 10 times? This is the first hearing.
 2 **MR. KRAUT:** My suggestion is not
 3 engage in debate. Rather allow since the hearing has
 4 been opened for the record, tonight is the first night
 5 of the hearing being held. Let Mr. Garfield's counsel
 6 complete his statements.
 7 **MR. SCHWAN:** Before any Eminent Domain
 8 taking should occur, I think the Town needs to
 9 put forth a master plan for dealing with this and
 10 looking at other options besides eminent domain.
 11 It is my understanding that Purchase Street has a
 12 storm sewer there. There has been no studies
 13 that I have seen as to why you couldn't hook to
 14 that storm system, you won't affect anybody's
 15 property. There has been no work that I have
 16 seen as to why the Roberts shouldn't be required
 17 to retain the water on their property instead of
 18 taking an eminent domain. Also, sitting here
 19 tonight there are several laws affecting the
 20 environmental issues that I think are now really
 21 coming into play. The Garfield property is on City
 22 sewer. Everyone else is on septic. Since the
 23 work has been done on the large property we have
 24 there's large e coli and fecal waste now flowing
 25 from the Robert's property on to our client's

1 property. So that's going to be an issue. And I
 2 think there should be a meeting with the town
 3 engineers and allow my client to get their
 4 engineering reports as to all the options to be
 5 reviewed by a professional engineer that we can
 6 retain to see if there are other options rather
 7 than taking it through the Garfield property.
 8 And also, what is the issue of going, I don't see how
 9 you're going to have a 35 foot construction
 10 easement through a pond.
 11 **MAYOR MALFITANO:** With all respect,
 12 attempts were made repeatedly over a prolonged period
 13 of time to do exactly what you just suggested. That
 14 never happened, and it was largely due to your clients
 15 inavailability, number one.
 16 Number two, with regard to what you
 17 just referenced as a 35 foot wide construction
 18 easement, we would certainly like to narrow that,
 19 client has refused to allow us access to his
 20 property. I would like to, if I could, you made some
 21 statements. You're not an engineer, I know that. Are
 22 you an engineer?
 23 **MR. SCHWAN:** No.
 24 **MAYOR MALFITANO:** You're not, you're an
 25 attorney?

1 **MR. SCHWAN:** Right.
 2 **MAYOR MALFITANO:** What I'd like to do
 3 is ask the Commissioner of Public Works, because
 4 he's an engineer. You made a number of statements
 5 on the record, that you made a number of
 6 statements I think he'll refute. So we have the
 7 record, so that we have the record as concise as
 8 possible.
 9 **MR. SCHWAN:** If I may say, the case law
 10 is clear, no one, including a town can use drains,
 11 pipes, ditches or any sort of artificial means
 12 that directs water from one person's property to
 13 another and increases the flow and any amount,
 14 it doesn't have to be, that's case law over 150 years.
 15 **MAYOR MALFITANO:** We understand
 16 but that's not the issue here. Commissioner, the
 17 suggestions that the discharge of water to the
 18 lower end of this drainage basin would increase with
 19 what has been proposed here, I understand this to be
 20 nothing other than taking the existing water flow
 21 and moving it effectively from one point location
 22 to another. There is no increase in the
 23 amount of water, that it is the same water that
 24 flows currently?
 25 **MR. WASP:** That's correct. Let me

1 in this case. So I just want for the record,
2 unless I am handed some document there were no
3 sewerage over flows to storm water.
4 MR. KRAUT: Mr. Wasp, If I
5 understand correctly, counsel for the condemnee
6 suggested there were some other means to push the
7 water out towards Purchase Street. Could you just
8 address that?
9 MR. WASP: You used the word, push,
10 you could pump it, you could pump water, very
11 inefficiently, try and pump it up to Purchase
12 Street because the grade, this is uphill to this point
13 and then it's a slight grade down. Moving water in a
14 pumping situation is not very efficient and not
15 reliable.
16 MAYOR MALFITANO: Okay. We have some
17 residents that have comments they would like to make.
18 MR. FINKLESTEIN: Barry Finklestein,
19 9 Meadow Lane. I'm actually the newest resident
20 on the street. I have only lived there since
21 2001. However, the problem is a significant one
22 and I think it's important that the Board
23 understands some of the background in terms of
24 time that's been involved in this problem. It
25 predates me. And the problem has only gotten

1 worse since I have been there.
2 There's a few other things that have
3 occurred on the street, like the building of a
4 berm which I believe the town records show is not
5 supposed to be there, that is also on the Garfield
6 property that helped add to water containment on
7 the street that should be looked at, as well.
8 That's not really the purpose of why the
9 residents of the street are here right now. What
10 we are concerned about is what has taken place.
11 Here to date we have been fortunate enough that
12 the only loss has been material loss, you will
13 hear from other residents on the street. People
14 have been stuck in cars, the ability for any kind
15 of services to get through the street is
16 impossible. We have lost material, truly lost
17 material goods. At least two cars have been
18 totaled because of the damage that's been done
19 when they got stuck in the ponds. One of the
20 residents will talk about how with the father's
21 stroke, he was unable to get out of the street to
22 attend to his father because of the problem.
23 It's only a matter of time before this Board
24 would be listening to the residents talk about
25 how we had to attend a funeral for loss of life

1 due to the inability to get service vehicles
2 through. There's not a chance that a police car,
3 an ambulance or fire truck could possibly get
4 through our street with the amount of water that
5 builds up. Approximately, three or four years
6 ago, it's somewhere in the town record there's
7 pictures of myself standing in the puddle with
8 water fully up to my knee to give you a rough
9 idea of what we are talking about here. And as
10 was said by the Town Engineer, when it freezes it
11 is beyond hazardous. But even when it doesn't
12 freeze it's beyond hazardous. Again, my concern
13 is a concern for the residents of my street.
14 We're a street that I am by far the youngest on
15 the street. As you can see, behind me we have
16 residents that are in their 80's. It concerns me,
17 concerns me greatly in terms of what is going to
18 happen. As far as claims with osteria and e coli, my
19 understanding there's never been any proof whatsoever
20 there's any problems with that in any way, shape or form.
21 We have repeatedly over the last five years, I have been
22 involved in this and tried to workout a solution.
23 We have tried to make Mr. Garfield very much a
24 part of the solution. He's attended numerous
25 meetings with us and suggested that it would be

1 something that he would be happy to be part of
2 and yet all times when we tried to put the Mayor
3 in front of him he's rejected those meetings.
4 Unfortunately, it's come to the point now where
5 it's taken the intervention of our town in order
6 to make this happen. Because while it is a
7 private road, we as tax paying citizens are
8 allowed the ability to have an environment in which
9 is safe and an environment in which we feel our
10 children and our elderly residents can feel safe
11 and comfortable in their homes. We don't have
12 that currently. I will say it one more time for
13 the record. The next time I am up here, God for
14 bid, it's going to be talking about the loss of
15 life on Meadow Lane. And it's going to be on
16 everybody's head if we don't take care of it now.
17 I wrote to the Mayor recently, it's something
18 neither I nor he can allow to happen. And to
19 Mayor Elect, it's something neither I nor you could you
20 possibly allow to happen. Thank you.
21 MAYOR MALFITANO: Just to add
22 something, it's what Barry had to say, we have had a
23 couple serious situations develop in significant storm
24 events where access was completely unavailable to the
25 residents. In one incident it was a serious

<p>1 mean in a foot and a half ice or two feet of ice and 2 chip away so somebody could get through. Five years 3 ago we had our pipes burst in our house because it was 4 so cold out and a fire truck tried to get through 5 because the alarms went off but it couldn't because 6 a UPS truck was stuck because it was in a in foot and a 7 half hole in the ice. So it gets beyond bad. The Mayor 8 has done everything he can to try and to get us to get 9 past this situation. Bon Wasp is going to do drawings 10 in the summer, this thing should have go on and for a 11 number of reasons some good some maybe not so great, it 12 hasn't. So we are now into another winter. Barry's 13 known it since 2001, we have known it longer than that 14 because this is unmentionable, I won't mention the 15 name who started, but I know one thing, Bruce 16 mentioned a very important point, and that is the 17 water runs downhill anyway. You're not going to 18 stop it. By the way, if you think you can build a 19 catch basin, this is bigger than 10 swimming pools. I 20 mean it covers Bruce's property, covers one property 21 up, it's three feet deep. There's no catch basin. 22 This thing is moving and it's big and it's a 23 very, very large pond. My dad was the one that 24 had the stroke and about year and a half ago and 25 I had to get out but I couldn't. So I had to wait</p>	<p>1 are you guys kidding? You want to honestly work 2 with us now? You're making amends? What 3 happened? I don't know if anybody knows this but 4 Mr. Garfield had a heart attack, was on his 5 exercise bike and thank God the emergency vehicle got 6 to him in time, took him to the hospital. He told 7 everybody how he was dead and now he's back alive. We 8 would love that opportunity, God forbid something 9 like that happened on the other side of the 10 puddle, of the pond. But we wouldn't get that 11 opportunity. 12 With that said, Mr. Garfield and his 13 son came over to our house, sat down and said, 14 you know what we'd like to do? Maybe if you run 15 this pipe through we won't even have this pond, we will 16 fill it up because we got these horrible mosquitoes 17 that are killing us. I'm looking around at the people 18 at the table. Did I just hear this guy right? He's 19 been fighting us. This guy has no idea. I don't 20 think that's particularly relevant here but you 21 know what? In the interest of justice, fairness, 22 whatever word, we're looking for, in the interest 23 of safe passage for people that are entitled to 24 it, act quickly, judiciously. Let's get everybody 25 together, the Engineering Department, Law</p>
<p>1 a few hours. 2 MR. KRAUT: Excuse me, just for the 3 record, I believe when you referenced catch basins, you 4 meant a detention area? The catch basin is actually 5 the structures used to pipe the water 6 MR. FREIDWALL: That's right, I meant 7 a very large holding facility, whatever. It's not 8 realistic. If anybody has seen the pictures or 9 seen what goes on on Meadow Lane during a rain 10 storm, it's impossible. This is water that's 11 flowing down the hill. All you're doing -- and 12 by the way, this doesn't have anything, if it's 13 going through a pipe through the pond, by the 14 way, the history of the pond, there's no pond. 15 The pond was created by the previous owner 16 because they wanted a pond, they thought it would 17 look nice so they raised the out take valve and 18 all of a sudden they had a pond. Mr. Garfield, 19 countless times, we have had meetings at our 20 house, cookies and coffee and get everybody 21 together and really made an effort to try to get 22 people on the same page here. I'm going to guess 23 three or four years worth. And the last time his 24 brother was on the street with him and they said, 25 now we really got to put this together. I said,</p>	<p>1 Department, Town Board, do what's right. It's 2 been seven years since we've been fighting this. I 3 mean, it's just absurd, you know. I appreciate your 4 efforts. 5 COUNCILMAN VETERE: Jonathan, this is 6 really a serious situation. Do we have any legal right 7 to under eminent domain, to get this property, without 8 no-- obviously, you have a stumbling block, whoever, the 9 fella is, that is where the problem is of people. 10 COUNCILMAN PALADINO: That is without 11 asking if there is an override or is there a special 12 provision in the eminent domain laws as to public safety 13 issues versus simply a drainage and water issue? I think 14 that's what he's trying to get at, a special provision 15 under eminent domain for public safety? 16 MR. KRAUT: There's a right for 17 extreme measure, public safety. Unfortunately, 18 it seems that those occasional efforts which have 19 been exercised by the Highway Department and the 20 Engineering Department going on to an area to 21 pump or remove ice don't carry the day. But 22 that's why we're having this proceeding under the 23 eminent domain law and there's no quicker 24 proceeding other than following this process. 25 The process is not a one meeting process. I will</p>

1 COUNCILMAN CANELLA: You don't need an
2 attorney here.

3 MR. KRAUT: I would suggest, there are a
few housekeeping matters. I'd like to address them
quickly, but if is there anyone else from
the public?

MR. FRIEDWALD: If Mr. Garfield was
healthy and and available to be here, I can't imagine
an argument can be made persuasive enough for you guys
to postpone what is obviously clear to everybody. So I
don't know. I know that everybody here, I don't know,
eye surgery, whatever, is going to next.
It's been five to 10 years we have been reaching
out in every conceivable way, he's had plenty of
time to respond while he was in good health. Okay, so
I just, Jonathan, I don't want there to be
minutes at all. Let's take care of business tonight,
please.

MAYOR MALFITANO: Absolutely
understood. Before we continue, for a minute, I
want to just give the audience here a quick remark and
apology because quite frankly, the Town of
Harrison has added two three, maybe four months
to this process while we didn't intend to. There
were some issues that evolved and people that

couldn't make it for health reasons and then we
missed a notification date and there were problems and
we contributed to the delay. I apologize for
that. But I do want to know that we have all
worked very long and hard to get to this point.
And what will transpire from here is due course, due
process. Counsel will advise us as to the
procedure going forward. And as he mentioned
earlier, it is all intended to be for the benefit of
the community so that we don't end up with any
issues that ultimately prevent us from doing what
we need to do here.

MR. PORTO: Robert Porto, I Allan
Place, Harrison. I'd just like clarification, I'd
to know where the water shed boundary is? Did I hear
Mr. Wasp say that there was a water shed involved?

MAYOR MALFITANO: No I didn't here that,
he said drainage basin.

MR. WASP: Drainage basin. It's
described on the map, it's approximately 20 acres of a
drainage basin.

MR. PORTO: I understand the
residents, they want to solve the problem but I
think eminent domain is always a bad idea. It should
be the very, very last used tool. I don't

1 understand why the Town is getting involved?
2 Can they raise the -- there must be an easier solution,
3 to take somebody's private property really should be
4 the last effect, like I said. And to move water along
5 so close the reservoir, in this sensitive area. To
6 ignore a pond as a resident that has nothing to do with
7 it but pay the bills, and worry about the environment,
8 I think there should be a notification solution.

9 VOICE: The answer is, it's not your
10 problem.

11 MR. FINKLESTEIN: With all due
12 respect, I don't know you from Adam, but I will
13 say the following, the Statement from the
14 resident who I don't know from Adam, was that
15 eminent domain should be the last resort. I
16 think he's absolutely right. And guess what?
17 We're at the last resort. If you can't see after
18 10 years of going through this after exhausting every
19 conceivable angle trying to do everything within and
20 without the legal process, trying to keep this as
21 non-litigious as possible has been taken, then my friend,
22 you have not heard very well. Please let him know, he
23 hasn't heard very well, because that's precisely where we
24 are. So you are right, sir. We are at the point where
25 eminent domain is the one and only solution to us because

1 we have an abstinence that we can't get over without it.

2 MR. WASP: I just want to say
3 something here, safety, I just want to reiterate the
4 safety issue here. The Public Works Department here,
5 our guys have gone out on numerous occasions. And the
6 residents, we did it because the residents were
7 endangered, either by police or fire. Calling us out
8 my highway crews are out there, they are in danger
9 too, working in very adverse, unsafe
10 conditions. And us going out there for the
11 public. It's a necessity to get this done. We
12 really have to move on this. We understand the
13 topography of the lay of the land, water does flow
14 downhill. This is a simple solution. It is a very good
15 solution and it is very efficient.

16 MR. PORTO: Last small comment,
17 you're going to get what you want, I'm sure of that,
18 the way your board operates. I get water too on Crystal
19 Street. We get water up to my hip. Should I take
20 my neighbor's pond or property or anything for that
21 reason?

22 MR. KRAUT: If I might, being as it
23 appears there's no members of the public who wish
24 to speak, there's some housekeeping items.

25 First, with the permission of the

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CERTIFICATION

STATE OF NEW YORK)

) SS.

COUNTY OF WESTCHESTER)

I, Lynn Farrell, Court Reporter and Notary Public
within and for the County of Westchester, State of New York,
do hereby certify:

That I reported the proceedings that are hereinbefore
set forth, and that such transcript is a true and accurate
record of said proceedings.

AND, I further certify that I am not related to any of
the parties to this action by blood or marriage, and that I
am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand.

LYNN FARRELL
COURT REPORTER

December 20, 2007

2007 -- 523 -- a

CONTINUATION OF THE PUBLIC HEARING
RE: PRELIMINARY BUDGET FOR 2008

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

Supervisor Malfitano stated, for the record, that the Board had made some changes to the Budget, particularly in the area of personnel and salary requests, adding that some work still needs to be done in relation to salaries paid in other surrounding communities. He added that \$30,000 had been included in the Budget for possible salary increases for certain individuals following the salary survey. Mr. Malfitano also stated that the budget for the Harrison Volunteer Ambulance Corps had been increased to \$550,000. He concluded by stating that the Percentage increase (for 2008) as adjusted will be 7.658%

Town Clerk Joan Walsh asked that the items that she had requested by included in the Budget, two of which were \$50,000 for scanning projects and \$18,000 for an Archive Clerk. Mrs. Walsh also said that the money in the Election Budget should remain because, although the County has taken over the election costs, they re-bill the Town for those costs. She further pointed out that there will be three elections in 2008, including the Presidential Primary in February 2008.

Fire Marshall Steve Surace discussed his budget requirements, stating that his department had increased all its fees, which should cover its costs, including the costs for an additional person. He pointed out that, due to new laws, there will be an increase in the number of mandated inspections, and the new fees will cover most of that cost. He also requested additional radios and light packages for their vehicles.

Commissioner of Public Works also addressed the Board various reductions proposed by Councilman Scappaticci regarding, among other items: part-time salaries, schooling for the Central Garage personnel and the NIKE base clean-up.

There was then a discussion of all the changes and reductions which had been proposed by Councilman Scappaticci.

The Budget Hearing was then recessed for a short period while personnel in the Comptroller's Office incorporated the changes as discussed.

On motion of Councilman Scappaticci, seconded by Councilman Cannella, the Hearing was resumed. – following the Executive Session. The time lapse was to allow the Comptroller's office to incorporate all the changes made during the Hearing.

Supervisor Malfitano then stated that changes had been made to the Preliminary Budget which now has a tax levy of \$32,733,861, at a rise of \$15.60 per thousand of assessed valuation, for an increase of 7.523%

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

December 20, 2007

2007 -- 523 -- b
ADOPTION OF THE FINAL BUDGET FOR 2008

Although this Resolution is incorporated following the Budget Hearing, the Motion actually took place following the Executive Session. This time lapse was to allow the personnel in the Comptroller's office to incorporate the changes made during the Hearing.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to adopt the Preliminary Budget with the changes as follows:

Page	Department	Account Number	Description	Preliminary Budget	Adopted Budget	Difference
1	Town Board	001-1010-100-0102	Salaries	69,748	72,336	2,588
		001-1010-100-0406	Travel and Conference	2,850	2,850	0
			Total			2,588
2	Supervisor	001-1220-100-0102	Salaries	311,907	326,951	15,044
		001-1220-100-0417	Postage Printing and Stationary	10,000	6,000	-4,000
		001-1220-100-0430		10,000	8,000	-2,000
			Total		9,044	
6	Assessor	001-1355-100-0476	Software Maintenance (Move to IT)	1,000	0	-1,000
				Total		-1,000
4	Receiver of Taxes	001-1330-100-0102	Salaries	181,665	185,109	3,444
		001-1330-100-0406	Travel and Conference	2,200	0	-2,200
				Total		1,244
7	Town Clerk	001-1410-100-0102	Salaries	141,499	143,557	2,058
		001-1410-100-0407	Special Services	10,000	13,000	3,000
				Total		5,058
7	Archive Grant	001-1411-100-0130	Part Time Salaries	0	15,000	15,000
		001-1411-100-0830	Social Security	0	930	930
		001-1411-100-0835	Medicare	0	218	218
				Total		16,148
9	Engineering	001-1440-100-102	Salaries	292,177	294,177	2,000

				Total	2,000	
11	Public Works	001-1490-100-0130	Part Time Salaries	4,200	2,000	-2,200
		001-1490-100-0406	Travel and Conference	10,000	5,000	-5,000
				Total		-7,200
16	Central Data Process	001-1680-100-0220	Office Equipment	2,500	0	-2,500
		001-1680-100-0406	Travel and Conference	10,000	5,000	-5,000
				Total		-7,500
15	Central Garage	001-1640-100-0102	Salaries	689,766	621,428	-68,338
				Total		-68,338
17	Town Special Items	001-1900-100-4490	Contingency	1,278,817	1,207,583	-71,234
				Total		-71,234
18	Police	001-3120-100-0158	O/T Special Detail	250,000	50,000	-200,000
		001-3120-100-0152	Salaries-Holiday	342,000	312,000	-30,000
		001-3120-100-0418	Telephone	118,450	128,450	10,000
		001-3120-100-0470	Gasoline	130,000	150,000	20,000
		001-3120-100-0830	Social Security	512,658	498,398	-14,260
		001-3120-100-0835	Medicare	119,896	116,561	-3,335
		001-3120-100-0158	Over time Spec Dept.	250,000	250,000	0
				Total		-217,595
21	Fire Inspection	001-3420-100-0102	Salaries	216,974	219,574	2,600
		001-3420-100-0240	Other Equipment	1,900	10,000	8,100
		001-3420-100-0130	Part time Salaries	0	30,000	30,000
				Total		40,700
22	Building	001-3620-100-0130	Part Time Salaries	27,900	30,000	2,100
		001-3620-100-0102	Salaries	602,401	610,278	7,877
				Total;		9,977
23	Volunteer Ambulance	001-4540-100-0407	Special Items	450,000	500,000	50,000
				Total		50,000
30	Employee Benefits	001-9000-100-0830	Social Security	545,188	544,219	-969
		001-9000-100-0835	Medicare	127,504	127,277	-227
				Total		-1,196
31	Library	002-7410-100-0490	Contingency	76,224	40,288	-35,936
				Total		-35,936

32	Highway	003-5110-100-0490	Contingency	86,120	98,052	11,932
		003-5110-100-0130	Part time Salaries	70,000	50,000	20,000
		003-5110-100-0488	Nike Clean Up	175,000	150,000	25,000
		003-9000-100-0830	Social Security	153,090	147,924	-5,166
		003-9000-100-0835	Medicare	35,803	34,595	-1,208
			Total			50,558
36	Village-Special Items	005-1900-100-4490	Contingency	166,815	191,088	24,273
			Total			24,273
37	Sanitation	005-8160-100-0102	Salaries	2,589,295	2,662,235	72,940
			Total			72,940
38	Employee Benefits	005-9000-100-0830	Social Security	182,969	187,491	4,522
		005-9000-100-0835	Medicare	42,791	43,849	1,058
			Total			5,580
46	Sewer Maintenance	013-8120-100-0490	Contingency	8,238	9,739	1,501
			Total			1,501
				10,309,545	10,101,157	208,388

FURTHER RESOLVED to adopt the amended Preliminary Budget as the Final Adopted Budget for 2008, which has produced the following tax levy: \$32,733,861 with an increase of \$15.60 per thousand, and a tax rate increase of 7.523%.

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

Adopted by the following vote:

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

NAYS: None

ABSENT: Councilman Paladino had left just before the Executive Session.

December 20, 2007

2007 -- 524

PUBLIC HEARING RE: LOCAL LAW FOR THE PURPOSE OF AMENDING
CHAPTER 235, SECTION 235-4 DEFINITIONS –
BY AMENDING DEFINITION OF “SB-O EDUCATIONAL SCHOOLS” AND
ADDING 235-17 U. SB-O EDUCATIONAL SCHOOLS IN THE SB-O DISTRICT
OF THE TOWN OF HARRISON ZONING ORDINANCE

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

Councilman Paladino questioned the language being used to amend the Law. He said that it deleted certain language which had been put in regarding the Windward School (on West Red Oak Lane) and asked if the new language affected the status of that School with reference to its being in compliance with the Law. He pointed out that the acreage is not 30 acres, and it is not west of I-684, and thus the School becomes non-conforming.

Attorney Kraut agreed that the word “nine” was deleted and “thirty” was substituted in reference to the required acreage. He agreed that, as a matter of law, if the language was changed so that an existing use became non-conforming, the existing use would still be permitted as a legal non-conforming use.

Mr. Paladino pointed out that it was not the intent of this modification to render the Windward School a legal non-conforming use, the purpose was to broaden the (definition) to allow this applicant to rent this building (at 400 Westchester Avenue) to a school which did not comply with the zoning. He further pointed out the areas in which the Windward School would now be non-conforming: not 30 acres but 9 acres, not west of I-684, and on West Red Oak Lane, not Westchester Avenue.

Attorney Kraut said the Law Department would make whatever changes the Board requires.

Seth Mandelbaum, of McCullough, Goldberger and Staudt, spoke for the applicant. He stated that there had been discussions with the Town Board honing the language for this amendment, and it did indeed make the Windward School non-conforming.

Councilman Cannella agreed that there had been discussions, with a view to limiting its application to any other parcels. He added that he was not troubled (by making the Windward School non-conforming.)

Mr. Paladino continued that any time the Windward School wants to do anything, they have to come to the town for a Special Permit. He asked if the purpose of the town was to limit the Windward School, or to limit the proposed use by Fordham University and (the possibility of) taking (the property) off the tax rolls. He criticized the drafting of the Law, and stated that it should be redrafted and re-presented to the Board

Mr. Cannella asked if there was a way to keep the template which limited the scope, and then backs out to avoid the problem being discussed, which would be a matter of clever draftsmanship, and it would accomplish the goals.

Councilman Paladino questioned how the Board could change the language, and still continue this as a Public Hearing with the language changed.

Attorney Kraut agreed that if the language change was substantive, and he thought it would be, the Hearing would have to be continued to another date.

It was agreed that the town attorneys and the attorney for the applicant would retire to another room and redraft the language so as to keep the Windward School as a conforming use. It was further agreed that the Hearing would be continued on a later date.

Resident Joe Derwin stated that he did not understand one point: it sounded as if the petitioners were writing the law, not the Town Attorneys or the Town Board.

Attorney Kraut stated that if the Board brought up a re-zoning or desired to amend a law, then the Town Attorneys wrote the new law, but generally, as a matter of practice, if an applicant wanted the changes, then they generally drafted the law, to be reviewed by the Town Attorneys for compliance and to protect the interests of the Town.

Mr. Paladino pointed out that this proposed change was taking away the rights of a property owner without them even knowing about it.

Resident Lucille Held asked for a show of hands of those who understood what was going on, what the new law permitted. She again referenced the possibility that if the zoning was changed, and then eventually Fordham instead of renting the property bought it, then the property would go off the tax rolls.

On motion of Councilman Cannella, seconded by Councilman Scappaticci, with three members voting in favor, the Hearing was recessed so that the language could be re-drafted. Councilman Paladino and Vetere voted no.

The Hearing was resumed.

It was suggested that the earliest possible date that this matter could be re-heard was December 28th, due to the requirements for public notice to be published in the

newspaper. Councilman Paladino said that he would be out of town on that date, but it was decided to go ahead for that date anyway.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to continue until December 28, 2007, at 5 PM, the Public Hearing RE: Local Law for the purpose of amending Chapter 235, Section 235-4 Definitions – by amending definition of “SB-O Educational Schools” adding 235-17 U. SB-O Educational Schools in the SB-O District of the Town of Harrison Zoning Ordinance.

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

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 525

AUTHORIZATION FOR A BUDGET TRANSFER FOR
THE TOWN JUSTICE DEPARTMENT
IN THE AMOUNT OF \$4,000

On motion of Councilman Cannella, seconded by Councilman Paladino,

it was

RESOLVED to approve the request of Comptroller Maureen MacKenzie on behalf of Court Clerk Rosemary King for a budget transfer in the amount of \$4,000 to purchase chairs for the offices of the two Justices. This transfer is needed in order to pay the stenographer and interpreter to the end of the year.

FURTHER RESOLVED that the following transfers be made:

FROM:

001-1110-100-0130

Town Justice-Part-Time Salaries \$4000

TO:

001-1110-100-0407

Town Justice-Special Services \$4000

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

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 526

ACCEPTANCE OF RESIGNATION OF FRED SCILIANO
AS CHAIR OF THE ARCHITECTURAL REVIEW BOARD

Mr. Sciliano has been elected Councilman/Trustee, effective January 1, 2008.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to accept the resignation of Fred Sciliano as Chairman of the Town of Harrison Architectural Review Board, effective December 31, 2007.

FURTHER RESOLVED to forward a copy of this Resolution to the Secretary of the Architectural Board of Review and its members.

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 527

AUTHORIZATION OF BUDGET TRANSFERS, IN THE AMOUNT OF \$14,000 FOR
THE PURCHASE OF NEW TIRES FOR THE #624 FRONT-END LOADER VEHICLE

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to approve the request of Commissioner of Public Works Bob Wasp for transfers of funds from two of his 2007 Budget accounts for repairs to the #624 front-end loader vehicle, for new tires.

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

Adopted by the following vote:

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

NAYS: None

ABSENT: None

December 20, 2007

2007 -- 528
DISCUSSIONS

BILLING PRACTICES OF THE AMBULANCE CORPS.

Chief of Police David Hall, stating that he was speaking as a private citizen, began by saying the Ambulance Corps does an excellent job. He continued that recently an elderly lady had called him as she had received a bill from the Corps in the amount of about \$1,000, after the insurance company had paid its share and that apparently it then goes to a collection agency. Mr. Hall said that he didn't think it was the intent of the Board when the Corps was founded that unpaid bills would go to collection. He added that if the funds are needed, then (the Town) should increase the budget for the Corps.

Councilman Scappaticci stated that what is supposed to happen is that the Insurance Company should pay, but what does happen in some instances is that the insurance company pays the individual, but the check does not go to the Corps.

Supervisor Malfitano said that there is a legal requirement that three attempts be made to collect the funds.

Corps Board member Albert Mignone said that people are told that if they cannot pay, they should come to the Corps and discuss it, that a letter is sent (with the bill) advising them of this. He added that often people have secondary insurance and all that is needed is that a claim be filed. Mr. Mignone further stated that the Corps has never taken anyone to court, that most people pay a reasonable sum, but if they are not able, it goes no further than that.

Councilman Paladino asked: What was the budget in the beginning (of the Corps) in 1990 and how many volunteers were there then, and what is the budget now, with how many volunteers.

Mr. Mignone replied that there are five volunteers now, but they will be becoming per diem employees, as the insurance cost is \$5,000 per person, so there isn't any advantage to keeping them as volunteers.

Councilman Scappaticci stated that the budget in 1996 was \$200,000, and now it is \$1.4 million.

Councilman Paladino pointed out that in 1990, the Town's contribution was \$50,000 and now in 2008, it is over half a million dollars. He added that people have to understand that the corps has changed. He also said that the Corps has to make the effort to collect these sums.

David Hall said that he did not think the person should be billed beyond the insurance payment, that if it were his money, she would keep thinking "How am I going to pay this?" He added that he is not thinking about some people (who can afford the cost) but about people in the Brentwood. If a person can afford it, that is one thing, but if they can't, that is another.

Mr. Mignone stated that the Corps has accepted \$100,000 in non-payment this year, and now has \$76,000 outstanding in collection, and there is another \$100,000 in processing. He added that changes have been made in the processing of bills, but collections (of bills) are down.

December 20, 2007

2007 -- 529

MATTERS FOR EXECUTIVE SESSION:

Personnel:	13
Contract Negotiations:	1
Security:	1

On motion duly made and seconded,
with all members voting in favor,
the Meeting was recessed for Executive Session
at 11:56 PM.

Councilman Paladino left the Meeting at this time.

On motion duly made and seconded,
with all members voting in favor,
the Meeting was re-convened at 1:03 AM
on December 21, 2008.

The Board adopted the Final Budget for 2008 at this time, but it is reflected in Resolution
2007—523--b immediately following the Budget Hearing.

December 20, 2007

2007 -- 530

APPOINTMENT OF IVONNE FORGIONE
AS AN INTERMEDIATE CLERK IN THE POLICE DEPARTMENT

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to approve the request of Police Chief David Hall and appoint Ivonne Forgione, as an Intermediate Clerk, Grade III, Step 1, at the annual salary of \$34,710 having passed the Civil Service Exam for this title and being among the top three persons on the list, to be assigned to the Police Department, effective January 14, 2008.

FURTHER RESOLVED that this appointment is on a probationary basis for twelve months.

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

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere and Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 531

AUTHORIZATION FOR THE PURCHASE OF CERTAIN EQUIPMENT
FOR THE POLICE DEPARTMENT
COST: \$47,516

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to approve the request of Chief of Police David Hall and authorize the purchase of certain equipment for the Police Department, as discussed in Executive Session, at a cost of \$47,516.

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 532

PROMOTION OF RICK MAGRINO TO THE POSITION OF
RECREATION SUPERVISOR AT THE ANNUAL SALARY OF \$66,996

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to approve the request of Superintendent of Recreation Ron Belmont and promote Rick Magrino to the position of Recreation Supervisor, Grade X-D, Step 1, having passed the Civil Service exam and being among the top three persons on that list, at the annual salary of \$66,996 effective January 1, 2008.

FURTHER RESOLVED that this appointment has a probationary period of one year.

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 533

PROVISIONAL APPOINTMENT OF DOROTHY DiBUONO AS
SENIOR OFFICE ASSISTANT – RECREATION, ON A PROVISIONAL BASIS

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to appoint Dorothy DiBuono to the position of Senior Office Assistant – Recreation, Grade IX-D, Step 1, on a provisional basis, at the annual salary of \$62,052 effective January 1, 2008.

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

Adopted by the following vote:

AYES: Councilmen Cannella, Scappaticci
Supervisor Malfitano

NAYS: Councilman Vetere

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 534

AUTHORIZATION TO CREATE THE POSITION OF OFFICE ASSISTANT-
AUTOMATED SYSTEMS IN THE INFORMATION TECHNOLOGY DEPARTMENT

This position has already been posted.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to create the position of Office Assistant – Automated Systems in the Information Technology Department, effective immediately.

FURTHER RESOLVED to forward a copy of this Resolution to the Personnel Manager, the Comptroller and the Director of IT.

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 535

APPOINTMENT OF TERRI MERRITT TO THE POSITION OF
OFFICE ASSISTANT-AUTOMATED SYSTEMS, ASSIGNED TO THE
INFORMATION TECHNOLOGY DEPARTMENT

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to appoint Terri Merritt to the position of Office Assistant-Automated Systems, Grade VII, Step 2, assigned to the Information Technology Department, at the annual salary of \$50,288 effective January 1, 2008.

FURTHER RESOLVED to forward a copy of this Resolution to the IT Director, the Comptroller and the Personnel Manager.

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 536

AUTHORIZATION FOR A HEALTH INSURANCE BENEFIT OVER-RIDE
FOR POLICE OFFICER THOMAS CONNOR FOR HEARING AIDS
AND ASSOCIATED COSTS AMOUNT: \$3,100

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to authorize a health insurance benefit over-ride for Police Officer Thomas Connor for two hearing aids and associated costs, at an overall cost of \$3,100, effective December 31, 2007.

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 537

AUTHORIZATION FOR THE SUPERVISOR TO CONTINUE NEGOTIATIONS
FOR THE CSEA CONTRACT WITH
THE DEPARTMENT OF PUBLIC WORKS FOREMEN

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to authorize the Supervisor to continue contract negotiations with the Department of Public Works foremen, under the Civil Service Employees Association, as discussed in Executive Session.

FURTHER RESOLVED to approve this contract, as discussed.

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

Adopted by the following vote:

AYES: Councilmen Cannella, Scappaticci
Supervisor Malfitano

NAYS: Councilmen Vetere

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 538 -- a

RE-APPOINTMENT OF MARK RINALDI TO THE PLANNING BOARD,
TERM TO EXPIRE DECEMBER 31, 2011

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Mark Rinaldi to the Planning Board, with his term to expire on December 31, 2011.

FURTHER RESOLVED to forward a copy of this Resolution to the Planning Board.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 538 -- b

RE-APPOINTMENT OF NONIE REICH TO THE PLANNING BOARD,
TERM TO EXPIRE DECEMBER 31, 2013

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Nonie Reich to the Planning Board, with her term to expire on December 31, 2013.

FURTHER RESOLVED to forward a copy of this Resolution to the Planning Board.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 538 -- c

RE-APPOINTMENT OF THOMAS HEASLIP TO THE PLANNING BOARD,
TO SERVE AS CHAIRMAN, TERM TO EXPIRE DECEMBER 31, 2015

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Thomas Heaslip to the Planning Board, as Chairman, with his term to expire on December 31, 2015.

FURTHER RESOLVED to forward a copy of this Resolution to the Planning Board.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 539 -- a

RE-APPOINTMENT OF MARK FISHER TO THE BOARD OF ZONING APPEALS,
TO SERVE AS CHAIRMAN, TERM TO EXPIRE DECEMBER 31, 2010

The dates of Mr. Fisher's appointment were in error, and have been corrected. The correct date for the expiration of this new term is December 31, 2010.

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Mark Fisher to the Board of Zoning Appeals, as Chairman, with his term as corrected to expire on December 31, 2010.

FURTHER RESOLVED to forward a copy of this Resolution to the Chair of the Zoning Board of Appeals.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 539 -- b

RE-APPOINTMENT OF MICHAEL STRONE
TO THE ZONING BOARD OF APPEALS,
TERM TO EXPIRE DECEMBER 31, 2012

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Michael Strone to the Zoning Board of Appeals, with his term to expire on December 31, 2012.

FURTHER RESOLVED to forward a copy of this Resolution to the Chair of the Zoning Board of Appeals.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere , Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 539 -- c

RE-APPOINTMENT OF RICHARD HALPERN TO
THE ZONING BOARD OF APPEALS, TERM TO EXPIRE DECEMBER 31, 2011

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to re-appoint Richard Halpern to the Zoning Board of Appeals, with his term to expire on December 31, 2011.

FURTHER RESOLVED to forward a copy of this Resolution to the Chair of the Zoning Board of Appeals.

Adopted by the following vote:

AYES: Councilmen Cannella, Vetere, Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 539 -- d

APPOINTMENT OF WILLIAM HAROLD TO THE ZONING BOARD OF APPEALS,
TO EXPIRE DECEMBER 31, 2013

On motion of Councilman Cannella, seconded by Councilman Scappaticci,

it was

RESOLVED to appoint William Harold to the Zoning Board of Appeals, in the place and stead of Linda Spero, effective January 1, 2008, with his term to expire on December 31, 2013.

FURTHER RESOLVED to forward a copy of this Resolution to the Chair of the Zoning Board of Appeals.

Adopted by the following vote:

AYES:	Councilmen Cannella, Scappaticci Supervisor Malfitano
NAYS:	None
ABSTAINED:	Councilman Vetere
ABSENT:	Councilman Paladino

December 20, 2007

2007 -- 540 -- a (corrected)

APPROVAL TO DEFEND AND INDEMNIFY STEPHEN MALFITANO,
JOSEPH CANNELLA, THOMAS SCAPPATICCI, DOMINIC PASCALE
AND DAVID HALL, IN THE MATTER OF TANCREDI, et al v MALFITANO et al.
(07-CIV-9617)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees and public officials pursuant to the Public Officers Law and prior Town Board Resolutions:

Stephen Malfitano	Joseph Cannella	Thomas Scappaticci
Dominick Pascale	David Hall	

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

*Dominick was misspelled (Dominic)

December 20, 2007

2007 -- 540 -- b

APPROVAL TO DEFEND AND INDEMNIFY
POLICE CHIEF DAVID HALL AND POLICE CAPTAIN ANTHONY MARRACCINI
IN THE MATTER OF DeVITTORIO, et al v MALFITANO et al. (07-CIV – 0812)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees pursuant to the Public Officers Law and prior Town Board Resolutions:

David Hall Anthony Marraccini

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 540 – c

APPROVAL TO DEFEND AND INDEMNIFY POLICE CHIEF DAVID HALL,
AND POLICE OFFICERS VINCENT MUSSOLINO AND EDWARD LUCAS
IN THE MATTER OF TANCREDI, et al v HALL et al. (07-CIV-7485)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees
pursuant to the Public Officers Law and prior Town Board Resolutions:

David Hall Vincent Mussolino Edward Lucas

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 540 – d

APPROVAL TO DEFEND AND INDEMNIFY
POLICE CHIEF DAVID HALL AND POLICE OFFICER LAWRENCE MARSHALL
IN THE MATTER OF DUFFELMEYER v MARSHALL et al. (07- 07 - CIV - 2807

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees and public officials pursuant to the Public Officers Law and prior Town Board Resolutions:

David Hall Lawrence Marshall

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 540 -- e

APPROVAL TO DEFEND AND INDEMNIFY
POLICE CHIEF DAVID HALL AND POLICE CAPTAIN ANTHONY MARRACCINI
IN THE MATTER OF CARPINELLO et al v HALL et al. (07 - CIV - 1956)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees and public officials pursuant to the Public Officers Law and prior Town Board Resolutions:
David Hall Anthony Marraccini

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 540 -- f

APPROVAL TO DEFEND AND INDEMNIFY
TOWN BOARD MEMBERS STEPHEN MALFITANO,
JOSEPH CANNELLA AND THOMAS SCAPPATICCI
IN THE MATTER OF DivITTORIO et al v MALFITANO et al.
(07 -- CIV -- 11353)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison public officials pursuant to the Public Officers Law and prior Town Board Resolutions:
Stephen Malfitano Joseph Cannella Thomas Scappaticci

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

Adopted by the following vote:

AYES:	Councilmen Vetere, Cannella and Scappaticci Supervisor Malfitano
NAYS:	None
ABSENT:	Councilmen Paladino

December 20, 2007

2007 -- 540 – g

APPROVAL TO DEFEND AND INDEMNIFY
TOWN BOARD MEMBERS STEPHEN MALFITANO AND JOSEPH CANNELLA
IN THE MATTER OF DUFFELMEYER et al v MALFITANO et al. (07-CIV-11352)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison public officials pursuant to the Public Officers Law and prior Town Board Resolutions:
Stephen Malfitano Joseph Cannella

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilman Paladino

December 20, 2007

2007 -- 540 -- h

APPROVAL TO DEFEND AND INDEMNIFY
SUPERVISOR STEPHEN MALFITANO,
BUILDING INSPECTOR ROBERT FITZSIMMONS
AND PLANNING BOARD CHAIR THOMAS HEASLIP
IN THE MATTER OF 24 FRANKLIN AVE. R. E. CORP AND MARC CASTALDI v
THOMAS HEASLIP et al. INDEX NO. 07 - 24531)

On motion of Councilman Vetere, seconded by Councilman Scappaticci,

it was

RESOLVED to defend and indemnify the following Town of Harrison employees and public officials pursuant to the Public Officers Law and prior Town Board Resolutions:
Stephen Malfitano Robert FitzSimmons Thomas Heaslip

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

Adopted by the following vote:

AYES: Councilmen Vetere, Cannella and Scappaticci
 Supervisor Malfitano

NAYS: None

ABSENT: Councilmen Paladino

There being no further matters to come before the Board the Meeting was, on motion duly made and seconded, with all members voting in favor, declared closed at 1:13 AM on December 21, 2007.

Respectfully submitted,

Joan B. Walsh
Town Clerk