

Meeting of the Town Board, Town of Yorktown held on Tuesday, October 22, 2019 at the Town Hall, 363 Underhill Avenue, Yorktown Heights, New York 10598.

Present: Ilan D. Gilbert, Supervisor
Alice E. Roker, Deputy Supervisor
Vishnu V. Patel, Councilman
Thomas P. Diana, Councilman
Edward Lachterman, Councilman

Also Present: Diana L. Quast, Town Clerk
Richard S. Abbate, Town Attorney

TOWN BOARD MEETING

Supervisor Ilan Gilbert called the meeting to order.

EXECUTIVE SESSION

Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved into Executive Session to conduct interviews for the Branding Request for Proposals, litigation, and negotiations. Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved out of Executive Session and proceeded with the meeting.

Supervisor Gilbert announced that this past week a “listening session” at Hilltop Farm took place where County Executive George Latimer made a commitment to the farm, county, and Town of \$875,000 for infrastructure and plans for the farm in phase one. He also announced that the Economic & Revitalization Business Committee has recommended a branding strategy for the Town – the coming together of both of those events is an exciting thing for Yorktown.

Councilman Diana said that a fundraiser has been put together for the slain police officer and Yorktown resident, Brian Mulkeen, to be held on October 26th in FDR Park at Parking Lot 4 from 12:00 noon to 4:00 pm. All proceeds will go to his fiancée and his children. The NYPD is also attending with their canteen truck, with Police Union and Superior Officers Union support.

Councilman Lachterman said that the owners of Pet Supplies Plus were also very involved and would probably have information regarding donations to Officer Mulkeen’s family.

PAS ASSESSMENT SOFTWARE UPGRADE

Sole Assessor Kim Adams Penner came before the Board to discuss upgrading their software with a program from Software Consultants. Ms. Penner said the company is looking for a commitment from the Town so they know how many people will be joining their program. The program will roll out during 2020 and will interface with other departments (e.g., building, tax). The cost is approximately \$42,000. Ms. Penner said Town Attorney Richard Abbate has reviewed the contract.

AUTHORIZE SUPERVISOR TO SIGN AN AGREEMENT TO UPGRADE PAS ASSESSMENT SOFTWARE FOR THE ASSESSOR’S OFFICE RESOLUTION #392

Upon motion made by Councilman Lachterman, seconded by Councilman Diana,

Resolved, the Supervisor is authorized to sign a Professional Service Agreement with Software Consulting Associates, Inc. for Assessment Software.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

REQUEST FOR AN AMENDED SPECIAL USE PERMIT – GETTY GAS STATION, 3700 BARGER STREET

Rich Williams from Insite Engineering presented the proposed project regarding to the Board. He represents NY Fuel Distributors and the owner of the property is Global Montello Group Corp – they were also the owners of the property back in 2017 when this came before the Board for a

special use permit for a gas station on the site. Mr. Williams spoke about the history of the previous request, which included constructing a canopy with three pump islands that could service six cars at a time. They are now proposing something different. His client, NY Fuel Distributors, will act as a tenant to Global Montello and operate the convenience store and pumps. The convenience store will operate as Coco Farms and the gas stations will be branded as Mobil. Mr. Williams displayed maps of the site and the layout of the property. The existing building would be razed and a new building would be repositioned farther towards the east and kitty-cornered for better visibility and be able to move back-of-house operations to the back (i.e., dumpsters). The new canopy would also be different and accommodate eight fueling stations. There is a stream, Barger Brook, that runs north to south, and they would need a wetlands permit. There would be a 2,600 square foot increase in impervious surface in the southeast corner behind the building as part of creating a loading zone and area for dumpster. They are proposing to put in a two-part stormwater treatment system; the first part would be for quality treatment. NYS Department Environmental Conservation defines this use as a “hot spot” because it is a fueling station and does not encourage infiltration of groundwater. The developer is proposing to use a hydrodynamic separator that is intended to catch “floatables” such as oils and gases and will require pump outs. Following that, they would also put in a detention system consisting of underground pipe that would be under the loading zone that would help in attenuating peak flows. The system is for both quality and quantity treatment of stormwater.

Councilman Lachterman asked if there would be any small engine repair and asked if that would take place with this proposal. Mr. Williams said this is a gas station/convenience store operation as opposed to a gas station/service repair operation.

Councilman Diana asked if remediation has been done at the site and if the Department of Environmental Conservation has given the site a “clean bill of health.” Mr. Williams said that the existing tanks have been removed and will contact the DEC for the status of the remediation/excavation and if it has been closed out.

The project will be referred out to the appropriate agencies and the developer will be called back to have a public hearing set.

Mr. Williams presented architectural renderings of what the convenience store would look like.

REFER OUT REQUEST FOR AN AMENDED SPECIAL USE PERMIT – GETTY GAS STATION, 3700 BARGER STREET
RESOLUTION #393

Upon motion made by Councilwoman Roker, seconded by Councilman Lachterman,

RESOLVED, that the Town Clerk of the Town of Yorktown is hereby authorized to refer out to the agencies listed below for their review and/or recommendation the Special Use Permit application made by NY Fuel Distributors, LLC for a gas station located at 3700 Barger Street, Yorktown, NY, also known as Section 16.07, Parcel 1, Lot 43. The request is also for an MS4 Stormwater Management Permit and a Wetlands Permit. The proposed work is for the demolition of the existing Getty Automotive Service at the location and replaces it with a new gas station and 2000 square foot convenience store, including the construction of a 2,200 square foot canopy and associated appurtenances.

Outside Agencies:

- New York State Department of Environmental Conservation
- New York City Department of Environmental Protection
- New York State Department of Transportation
- Westchester County Planning Board/Planning Department
- Westchester County Soil & Water Conservation District

Town of Yorktown Agencies:

- Advisory Board on Architecture & Community Appearance (ABACA)
- Building Inspector
- Conservation Board
- Engineering Department
- Highway Superintendent
- Planning Department
- Planning Board

Town Attorney
Town Board
Tree Conservation Advisory Commission

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

PROPOSED LOCAL LAW - SPECIAL USE PERMIT FOR THE PURPOSES OF
LARGE SCALE BATTERY STORAGE FACILITIES

Town Attorney Richard Abbate presented a draft of a local law addressing the installation of large scale battery storage facilities in Town. Councilwoman Roker asked why is the Board considering a proposed local law if they are also considering a moratorium? Mr. Abbate said the idea behind the proposed moratorium is to stop all of the battery storage installation requests and give the Board the time to delve into the law. It is for one year with an automatic sunset clause and will not allow any installations to be built. He said this is brand new technology and there is not a lot of information out there and not a lot of other communities have done this.

Councilman Lachterman asked if the Town really needs the moratorium because they would have to approve the building of the installation anyway. Mr. Abbate said we do not have a local law or procedure in place to approve an installation. There are safety issues to be considered. This is a model local law based on NYSEERDA (New York State Energy Research and Development Authority) and has been cut and pasted but it does not mean the Board has to adopt it. Mr. Abbate suggested the Town Board may want to look at how these battery storage facilities fit into the Town's Comprehensive Plan, how the community wants to deal with it, etc. The moratorium gives the Town the option to hold off, sit back, and take a look at all of this. The issue right now is that there are two applications out there; one before the Planning Board requesting accessory use and one before the Zoning Board.

Councilwoman Roker said the one application being looked at by the Planning Board is requesting use as a utility. Director of Planning John Tegeder said the difference between the applications is that one is in "front of the meter" and the other is "behind the meter," which to him is a world of difference in how they fit or not fit into what we currently have on the books, which is nothing on battery storage. He said that Staples on Route 202 has installed solar panels on their roof behind the meter, which means basically that they are generating their own electricity and it is done on a net metering basis so electrons do not necessarily go into their building but they produce a certain amount and use a certain amount, which gives an offset. This means they are producing their own electricity. On the days they produce more electricity than they need it goes back into the grid and reduces their cost. He said, in a sense, they are "off the grid" in terms of having to pull energy from outside. The battery storage for that is supplemental to the solar panel system so it is behind the meter. It will take the energy that is collected on a sunny day and will store it on a less sunny day and therefore release it when needed and even out the fluctuation. Mr. Tegeder said this is why he believes it is an accessory use incidental to the main use. It is conceived as part of their utility and equipment on site and is beneficial to them. Does it benefit the entire grid? In a certain way, yes, because there is less energy that is being produced outside and in peak times there is energy being produced that will lessen the load. Nevertheless, Staples Plaza will own the system and it will benefit their electrical generation and electrical use.

Supervisor Gilbert said he understood how Mr. Tegeder sees a difference but he is also concerned that the safety concerns of both need to be addressed. Just the fact that is an accessory use request does not change those concerns. Mr. Tegeder agreed. Mr. Tegeder said the other type, which is in front of the meter, is an installation that is connected to the grid. It will pull energy from the grid to charge the batteries in off peak times when the energy is less expensive and will release it back in peak periods when energy is more expensive. It has nothing to do with electrical generation at the site and is not connected to solar or benefitting a single user. As a standalone use, there is no provision for it in Town Code. As accessory use behind the meter it can be considered by the Town and the Town has approved many panel solar systems as an accessory to a main use (e.g., Jefferson Valley Mall). However, this does not change the concern over safety. The Staples application has been before the Planning Board who has been very concerned about the safety issues and is requiring the applicant to produce a safety plan and work with the Fire Board. There is a whole effort to address the safety issue with battery systems that is similar to what is listed in a pamphlet issued by New York State (issued in July 2019) as well as a new Building Supplement

issued by the state. Mr. Tegeder went on to explain how this application is being required to follow all code requirements.

Councilwoman Roker said that nonetheless the Town Board has to understand the concerns that residents may have before any applications are reviewed. She said she believed this is “too new” of a technology for the Town Board to give it a go-ahead.

Councilman Patel said his issue with this is the quantity of energy produced. How many kilowatts are produced and what is the capacity for each installation? The volume and the weight will be much smaller than now but the new technology includes lithium.

Supervisor Gilbert asked that rather than be left where the town is left to interpret it as an accessory where the board does not need to give approval, can the town create a law that equates whether or not it is an accessory (regardless of whether it is before or behind the meter)? Mr. Abbate said a law can be drafted that says approval is a Town Board action. Councilwoman Roker said a resident told her that there are discussions going on in New York City about this because they are concerned that safety cannot be guaranteed. Mr. Tegeder said you can never guarantee safety; there are always system failures.

Councilman Lachterman asked what the insurance companies think about these installations. Tyler Kiss, a representative of Yorktown Energy Storage LLC, sat at the Board. His group has an application request to the Town on Gomer Court. Councilman Diana asked what would happen in a failure and what would happen in a catastrophic failure. He also asked what training and/or equipment will the battery companies give to Yorktown’s first responders in the case of an emergency. Supervisor Gilbert said the Board needs to also look at where they potentially want to allow these installations in Town. Mr. Kiss said the company is willing to give full training and cooperation to first responders to understand how to properly address any catastrophic situation and containment. He said nuclear facilities are being decommissioned and the State is taking a more active role in producing renewal energies and if you are going to have more wind power and solar power on the grid, the only way to make that effective is through the use of this storage so that you can make a dispatchable asset to provide the residents with electricity.

Councilman Patel raised the issue of the quantity of energy and the method of storage. He said that the dismantling and recycling will be the responsibility of whoever owns the storage facility. The law should also incorporate how large the volume of power that is generated can be.

Councilman Diana asked how big these containers are. Mr. Kiss said their application before the Zoning Board proposes a containerized lithium ion battery solution system; within that system is a great deal of electronics, the battery, and safety protection that help monitor and control the battery so that it is not operating out of its feasible operating window. Temperature is the most important instrument that could potentially ever cause a catastrophic event (“thermal runaway”). If these systems fail, the batteries are contained within themselves inside this system so no runaway would be transmitted to an adjacent unit. Thermal runaway cannot happen if temperature is low, and that is why the fire suppression system they are proposing would lower the temperature in the unit so that the physical thermal chemical runaway action stops. He also said that NYSERDA has put out pretty strict code requirements for anyone looking into these facilities in order to qualify for incentives.

Councilman Patel said that the bigger the amount of kilowatts should determine how large these installations will be and so far he has not heard about quantity. Mr. Kiss said the network they are proposing is a 5-megawatt network.

A discussion of the moratorium took place. Mr. Abbate mentioned that Putnam Valley has put a moratorium on these storage facilities.

Councilman Diana asked for a presentation that would show the best case and the worst case scenario of the battery storage facilities.

REFER OUT TWO PROPOSED LOCAL LAWS - SPECIAL USE PERMIT FOR THE PURPOSE OF LARGE SCALE BATTERY STORAGE FACILITIES AND TEMPORARY MORATORIUM OF THE BUILDING OF BATTERY STORAGE FACILITIES RESOLUTION #394

Upon motion made by Councilman Lachterman, seconded by Councilwoman Roker,

RESOLVED, the Town Clerk is hereby authorized to refer to the appropriate agencies a proposed Local Law to amend Chapter 300 of the Code of the Town of Yorktown entitled “Zoning” by adding a new Article VII Section 300-81.5 “Battery Energy Storage Systems” and a proposed Local Law to amend Chapter 300 of the Code of the Town of Yorktown entitled “Zoning” by adding a new Article VII Section 300-81.5 “Temporary Land Use Moratorium Prohibiting Large Scale Battery Energy Storage System Installations Within the Town of Yorktown.”

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

DENIAL OF SECTION 207C STATUS
RESOLUTION #395

Upon motion made by Councilwoman Roker, seconded by Councilman Diana,

Whereas, the Town of Yorktown is in receipt of the April 1, 2019, written request of PO Michael Echeverria for General Municipal Law Section 207-c (“Section 207-c) status for pain/injuries allegedly sustained to his lower back from July 23rd, 2018 to present.

Whereas, after investigation of the circumstances of the alleged incident and injuries, and after consultation of the Town Board and the Town not possessing sufficient medical evidence to conclude that there was a direct causal link between PO Echeverria’s injuries and the “performance of his duties” on or about July 23, 2018,

It is Hereby Resolved that the April 1, 2019 request for Section 207-c status is denied and the Town Supervisor is authorized to advise Police Officer Echeverria thereof.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

AUTHORIZE THE SUPERVISOR TO EXECUTE A CONSERVATION EASEMENT AND AGREEMENT
RESOLUTION #396

Upon motion made by Councilman Diana, seconded by Councilman Patel,

It Is Hereby Resolved, that the Town Board authorizes the Supervisor to execute the Conservation Easement and Agreement, and any other documents necessary to record the Easement, in regards to the Planning Board Resolution Number #18-15 Approving the Subdivision Plat Titled “Prestige Renovations and Remodeling and Sediment & Erosion Control Plan, dated September 17, 2018.”

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

ACCEPT THE FOLLOWING CREDITS AS CHANGE ORDERS TO MONTESANO BROTHERS CONTRACT FOR THE GRANITE KNOLLS RECREATION AND SPORTS COMPLEX PROJECT
RESOLUTION #397

Upon motion made by Councilman Diana, seconded by Councilman Patel,

Be It Resolved, that the Town Board hereby agrees to and accepts the following credits as change orders to Montesano Brothers contract for the Granite Knolls Recreation and Sports Complex Project:

6/1/19	#M45	\$11,536.14	Credit for Plantings
8/15/19	#M44	\$15,385.36	Credit for Outdoor Equipment
8/22/19	#M46	\$ 6,273.85	Credit for Pumps
		\$33,195.35	Total Credit to Contract

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

AUTHORIZE COMPTROLLER TO RELEASE RETAINAGE IN THE AMOUNT OF \$34,319.57 TO MONTESANO BROTHERS, INC. AS GRANITE KNOLLS RECREATION AND SPORTS COMPLEX PROJECT IS COMPLETE
RESOLUTION #398

Upon motion made by Councilman Diana, seconded by Councilman Patel,

Whereas, Montesano Brothers, Inc., has completed the Town of Yorktown Granite Knolls Recreation and Sports Complex Project, and

Whereas, the Town has withheld \$164,462.65 as retainage, and

Whereas, the amount of retainage can be reduced to \$130,143.08, now

Therefore, Be It Resolved, that retainage in the amount of \$34,319.57 is hereby released to Montesano Brothers, Inc.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

AUTHORIZE SUPERVISOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH FRED COOK, JR., INC. FOR TOWN-WIDE PROGRAM TO PERFORM TV INSPECTION OF SEWER PIPELINES
RESOLUTION #399

Upon motion made by Councilman Diana, seconded by Councilman Patel,

Whereas,

1. The Town sewer infrastructure is approaching 50 years old in many locations and a program of regular inspections is needed to assess current pipeline conditions and to identify areas that will need rehabilitation or replacement in future years. In addition, as a public-owned treatment works with a SPDES permit, the Town has in place a Capacity, Management, Operation and Maintenance Plan (CMOM) that obligates us to regularly assess the sewer piping system and to prioritize short term and long-term repair/replacement projects.
2. The Town started the inspection program in 2017 along Hill and Lee Boulevards and continued in 2018 along Somerston Road and Sheila Court. Through these efforts, the Sewer Department has not encountered any sewage blockages or overflows in these areas. We plan to continue our inspection program along Crompond Road, Commerce Street, Underhill Avenue, Downing Drive, Veterans Road, Baldwin Road and Gilbert Street to address any deficiencies and have similar results.
3. The project will include the following scope of work: (1) perform up to 3,000 linear feet of light cleaning in sewer pipelines; (2) perform up to 3,000 linear feet of heavy cleaning in sewer pipelines; and (3) perform up to 6,000 linear feet of television video inspection. Also includes a report that summarizes the conditions found and any follow-up work that needs to be done.
4. Since the nature of pipeline cleaning will not be known until the actual work begins, i.e. whether light cleaning will be enough to clear debris and sediment for the camera to pass through (or if heavy cleaning and root cutting will be needed), the project was bid with unit prices.
5. The Town has been satisfied with the services provided by Fred Cook Inc. and the firm has agreed to hold their pricing for a new agreement. All terms and conditions of the original agreement will remain the same.
6. The prices bid by Fred Cook Inc. were as follows: (1) Light or heavy cleaning 1,000 linear feet @ \$1.00 per linear foot; (2) Heavy cleaning including root cutting 2,000 linear feet @ \$1.00 per linear foot; (3) 14-inch diameter piping and above: 2,000 linear feet @ \$1.50 per linear foot Video inspection, DVD and final report 6,000 linear feet @ \$1.25 per linear foot.
7. The Department will use available funds for the purchase, however we need the Comptroller to make the following 2019 budget transfer:
 - a. \$2,500 from YS8130.460 Maintenance Repair Plant to YS8130.459 Infiltration & Inflow Control

Now, Therefore Be It Resolved, that the Town Board authorizes the Town Comptroller to make the budget transfer as noted above and the Town Supervisor to sign a Professional Services Agreement with Fred Cook Inc., for the scope of work as described in preceding section in the not-to-exceed amount of \$13,500.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

AUTHORIZE RELEASE OF PERFORMANCE & EROSION CONTROL BOND FOR RCB
SUBDIVISION – CHECK NO. 1067
RESOLUTION #400

Upon motion made by Councilman Diana, seconded by Councilman Patel,

Whereas,

1. Rich Bartzick as owner and developer posted check #1067 in the amount of \$5,000 to serve as the Erosion Control Bond which was accepted at the Town Board meeting of October 4, 2011 for the RCB Development Subdivision located on Old Crompond Road, and
2. Rich Bartzick had chosen to construct the public facilities first and not pay the Performance Bond at that time and was required as per Town code to post a Maintenance Bond or equivalent security equal to 10% of the Performance Bond, and
3. Rich Bartzick posted Check #1093 in the amount of \$4,563.00 which was accepted at the Town Board meeting on June 24, 2014, to serve as the 10% of the Performance Bond, and
4. Rich Bartzick requested a Performance Bond reduction which was reduced at the Town Board meeting of August 5, 2014, (\$4,563.00 - \$2,028.00 = \$2,535, back to developer - \$2,028 remaining balance.
5. Rich Bartzick recently sold the subdivision and has requested his \$5,000 Erosion Control Bond and his remaining 10% of the Performance Bond in the amount of \$2,028 be released.

Now, Therefore Be It Resolved, that the above referenced monies totaling \$7,028 be released to Mr. Rich Bartzick, RCB Development, 1 Baltic Place #201, Croton-On-Hudson, NY 10520-1655.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

APPROVE INFORMATIONAL HEARING DATES AND TIMES IN CONNECTION WITH
THE EXTENSION OF SEWER SERVICE IN THE HALLOCKS MILL SEWER DISTRICT
RESOLUTION #401

Upon motion made by Councilman Lachterman, seconded by Councilman Patel,

Resolved, that Informational Hearings in connection with the extension of sewer service in the Hallocks Mill Sewer District will be held on Saturday, November 2, 2019 from 1:00 p.m. to 3:00 p.m. and Monday, November 18, 2019 from 6:00 p.m. to 8:00 p.m. Both meetings will be held at the Senior/Nutrition Rooms located in the lower level of the Albert A. Capellini Community and Cultural Center, 1974 Commerce Street, Yorktown Heights, NY 10598.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

AUTHORIZE SALE OF OBSOLETE VEHICLE - CENTRAL GARAGE DEPARTMENT
RESOLUTION #402

Upon motion made by Councilman Diana, seconded by Councilman Patel,

Whereas, the Central Garage Department has designated the following vehicle to be obsolete:

2000 Ford Suburban, VIN 1FMZU71X5YZC54158, 71,000 miles

Now, Therefore Be It Resolved, that the Town Board authorizes such vehicle to be placed on public online auction with Absolute Auctions & Realty, Inc., the Town's contracted auctioneer, and to be sold to the highest bidder.

Gilbert, Roker, Patel, Diana, Lachterman Voting Aye
Resolution adopted.

EXECUTIVE SESSION (Closed Session)

Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved into Executive Session to discuss the employment history of a particular person. Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved out of Executive Session and Adjourned the Town Board meeting.

ADJOURN MEETING

Upon motion made by Councilman Diana, seconded by Councilwoman Roker, the Town Board meeting was adjourned.

DIANA L. QUAST, TOWN CLERK
TOWN OF YORKTOWN
CERTIFIED MUNICIPAL CLERK