

A regular Meeting of the Town Board of Guilderland was held at the Town Hall, Route 20 McCormick's Corners, Guilderland, NY, on the above date at 7:30 pm. The meeting was opened with the Pledge of Allegiance to the flag. Roll call by Rosemary Centi, Town Clerk, showed the following to be present:

- Councilman Redlich
- Councilwoman Slavick
- Councilman Pastore
- Councilman Grimm
- Supervisor Runion

**ALSO PRESENT:** Richard Sherwood, Town Attorney

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Supervisor Runion welcomed everyone to the evening's meeting and asked for a motion accepting the minutes of the December 7<sup>th</sup>, 2010 Town Board meeting.

**MOTION # 206** Councilman Pastore moved to **ACCEPT THE MINUTES OF THE DECEMBER 7th, 2010 TOWN BOARD MEETING.** Councilwoman Slavick seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Abstained
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**Public Comment Period: No public comment**

**PUBLIC HEARING:**

**7:30 PM – State Farm Utility Corporation Sewer Rates**

Town Clerk, Rosemary Centi read the legal notice.

**Steven B. Strong, State Farm Utility Corporation**, appeared before the Town Board with an explanation for the request for a sewer rent rate increase. The funds will be segregated and held by the Town and used solely for the sewer district.

**(P 140A)**

Customers of the State Farm Utility Corporation will eventually be paying the same rate as Town residents. Residents of Presidential Estates and the owners of Heritage Village have been apprised of the request.

Supervisor Runion, again, explained the history of the Corporation. Rates for the Corporation are at \$125.00 per year and have not been increased in forty years. The rate increase, comparable to Guilderland sewer customers, which is approximately \$301.00 per year, will be staged in over a three-year period. When the lines have been brought up to Town standards, which are being studied by Barton and Logiudice, Town Designated Engineers, the Town will take them over.

**Anne Rose, Jefferson Court**, Treasurer of the Neighborhood Association, asked about the rate increase. She also expressed her concern that all residents be notified of the rates.

**David Freedman, Lincoln Drive**, Vice President and Association member, explained that information had been sent out in their February newsletter, which is dropped to every house in the Association, through e-mails, and meetings with Steven Strong, and Bill West, Superintendent of Water and Wastewater Management.

Mr. Strong reminded the Board that they had a list of customers for the sewer district. Homeowners were apprised of the rate increase at the meeting, which would be \$301.00 phased in over a three year period.

Councilman Grimm asked if Heritage Village Apartments had been notified.

Supervisor Runion stated that the owner of the complex had been notified and was in favor.

**Bob Wakeman**, attorney for the owner of Heritage Village Apartments, stated that they were in favor of the increase.

Bill West explained that the fee was a flat rate. He also stated that he would be reviewing the recommendations of the engineering firm.

**David Freeman** assured the Board that this information regarding fees would be sent out to neighbors via First Class mail. He also stated that due diligence had been done regarding notification.

He also stated that no resident had spoken to him that was not in favor of the rate increase.

**Melissa Mirabile, Presidential Way**, stated that neighbors have been given door to door notice of the problem. She spoke in favor of the increase explaining that pipes were at risk of collapsing and in fact some basements had been flooded with sewage.

**Jim Burch, Heritage Village owner**, explained the issue from his perspective. He was in favor of the rate increase even though it would be 2 1/2 times the current rate. He stated that they would get out from under a substantial liability regarding the system's deterioration. The benefit is the reliability of the system for their residents. He would like to see it done as soon as possible.

**John Wagner, Presidential Way**, also in favor of the increase, reiterated the problem with sewage flooding some homeowners' basements.

**Gordon McClelland, Adams Ct.**, stated this issue has been discussed for over a year, notices have been sent out and it was time to deal with the issue.

Supervisor Runion stated that he had received several calls regarding the deterioration of the lines.

He further stated that he was in favor of going ahead with the increase. The greater majority of residents had been notified and had spoken.

Further discussion was held regarding the issue.

**MOTION #207** Councilman Redlich moved to **CLOSE THE 7:30 PM PUBLIC HEARING ON STATE FARM UTILITY CORPORATION SEWER RATES.**

Councilwoman Slavick seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye

Councilman Grimm	Aye
Supervisor Runion	Aye

**MOTION #208** Councilman Redlich moved to **GRANT THE RATE INCREASE FOR STATE FARM UTILITY CORPORATION OVER A THREE YEAR PERIOD, ONE THIRD EACH YEAR, AND AT THE END OF THE THIRD YEAR ALL CURRENT PROPERTY OWNERS WITHIN THE STATE FARM SEWER AREA WOULD PAY THE SAME RATE AS ALL OTHER TAXPAYERS. THE SUPERVISOR IS AUTHORIZED TO SIGN THE AGREEMENT TO HAVE THE ADDITIONAL MONIES ABOVE THE \$125.00, WHICH IS CURRENTLY CHARGED TO PRESIDENTIAL ESTATES, AND THE ADDITIONAL MONIES CHARGED TO THE OTHER PROPERTY OWNERS, TO BE PLACED IN AN ESCROW ACCOUNT FOR FUTURE REPAIRS WHICH WILL BE ALLOCATED BY THE TOWN BOARD. BOARD APPROVAL WOULD BE NEEDED TO RELEASE ANY MONIES FROM THE ESCROW ACCOUNT.** Councilwoman Slavick seconded the motion and it was carried by the following roll call vote.

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**AGENDA ITEMS:**

Item #1 on the agenda concerned authorizing the Supervisor to sign an agreement with Guilderland Central School District for cost sharing in Tax Assessment litigation by Star Plaza.

Supervisor Runion explained that a few months ago the Town entered into a similar cost sharing agreement regarding 20 Mall. The two properties are next door to each other and the value of one could impact the value of another. The school board felt that the monies that could be lost in school taxes by the re-assessment were significant enough to participate in the agreement. The school district would pay 70% of the defense cost and the Town paying 30%. The law firm of Girvin and Ferlazzo will be used.

Councilman Grimm asked how the split was arrived at.

Supervisor Runion stated that it was based on how much in taxes each entity received.

**MOTION #209** Councilman Pastore moved to **AUTHORIZE THE SUPERVISOR TO SIGN AN AGREEMENT WITH GUILDERLAND CENTRAL SCHOOL DISTRICT FOR COST SHARING IN TAX ASSESSMENT LITIGATION BY STAR PLAZA, INC.** Councilman Redlich seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**MOTION #210** Councilman Redlich moved to **AUTHORIZE THE SUPERVISOR TO EXECUTE A SUPPLEMENTAL BETTERMENT AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION FOR BRIDGE REPAIRS.** Councilman Pastore seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

Chuck Klaer asked about the issue of the Ring Road.

Supervisor Runion stated that the road was not part of the issue. There is no jurisdictional issue regarding the bridge.

Item #3 on the agenda concerned the request for interpretation for allowed uses in Mill Hill PUD Phase 4 made by Crestmoor Mill Hill Community Corp. (Phase 4 Mill Hill PUD permits a Nursing Home Facility and applicant proposes a memory care/assisted living facility).

Supervisor Runion explained that currently under the Phase 4 Mill Hill PUD, the property is to be used for a nursing home facility. The applicant proposes an Alzheimer's Memory Care Facility.

Terresa M. Bakner, attorney for the property owner of Phase 4 of the Mill Hill PUD, sent a letter to the Town Board on December 6<sup>th</sup>, 2010, outlining their request for the interpretation of the allowed uses in Phase 4. **(P 143A)**

She stated that the proposal is consistent with the language of the local law and the Layout Plan prepared by CT Male, dated January 4, 1993.

She further stated that they fall within the definition of nursing care home as defined in the Town of Guilderland Zoning Code and was before the Town Board for their concurrence that this is an acceptable use for the facility.

Councilman Pastore questioned if the definition was a question of semantics.  
Ms. Bakner agreed that it was.

Original plans were shown as were plans for the new facility

Councilman Redlich stated that the original PUD called for a progression of services to the nursing care need, he asked if the services that would be provided differ from what Atria was already providing and wasn't the final step being eliminated?

An explanation was given by Ms. Bakner and by a regional director of operations.

She stated that this was a type of care facility that can be located here and that nursing homes were having a difficult time surviving. Fewer people today need to go to nursing homes because of this flexible, better understood level of care, which gives people more flexibility. She further stated that the Town's definition of nursing care home is broad and is capable of encompassing a memory care facility such as this.

She further added that the infrastructure was already in place for this facility.

Councilman Redlich asked about the type of people that would be served.

Ms. Bakner explained the difference.

This would have a major portion of memory care which was a secure facility whereas the Atria was an assisted living facility and residents could leave.

Supervisor Runion asked about a Certificate of Need.

Ms. Bakner stated that there was licensure but that it was not the same. The applicant had no interest in the site as a nursing home.

David Luntz, attorney on behalf of Atria Guilderland, expressed his concerns regarding another assisted living facility on the Mill Hill PUD. He stated that it was conceived, proposed, and approved based on the expectation that a skilled nursing facility would be built on Phase 4. He further stated that this was a violation of Town law as it exists and that it would be fundamentally unfair to Atria. He further stated that the site plan clearly states a skilled nursing facility.

He further stated that he felt it was a violation and a change of the Town Law as it exists. Donna Sickler, Atria, explained that there were 90 residents at Atria, 20 are memory care residents.

Discussion was held regarding the definitions of nursing care and assisted living.

Councilman Pastore stated that the Town had a definition under the local law, which, from his interpretation, fit both the proposed facility as well as the existing one.

He asked Mr. Luntz how his interpretation deviated from that definition. Mr. Luntz and Ms. Sickler explained their interpretation.

Supervisor Runion asked what the likelihood would be that the State of New York would grant a Certificate of Need for skilled nursing home at this time.

Ms. Sickler stated that she felt this would be a good site for a skilled nursing home.

Discussion was held regarding the issue and definitions of law.

Ms. Bakner said that what they were asking is whether what they proposed is allowed under the definition that is allowed under the Town's Zoning Code, which was read. She stated that it was a general definition and this proposed use meets the intent and the goal of the PUD as designed. Everything that is planned for the site is for residents that are mobile. Councilwoman Slavick asked what the ratio would be for memory care to assisted living. The ratio was 75% to 25%.

Councilman Redlich stated that this issue needed more review.

Ms. Bakner stated that the definition of nursing home was not defined in the Town's local law, it was defined in the Zoning Code, and that it clearly encompassed the proposal being made.

Councilman Redlich suggested changing the language in the PUD to clarify the issue.

Councilman Grimm asked Mr. Luntz if Atria's main objection was the competition and should the Town Board be proscriptive regarding businesses.

Mr. Luntz agreed that they came in with the understanding that they would be the only assisted living facility on site.

Councilman Redlich suggested taking a closer look at the entire plan so that both parties are better off.

Supervisor Runion stated that the definition in the Zoning Code described and permits the facility to go from an assisted living facility to a skilled nursing care facility. He stated that the definition seems to describe exactly what the applicant wants to place there.

Mr. Luntz stated that he had not seen Ms. Bakner's letter of December 6<sup>th</sup> and further stated that if there is a change in Town Law there should be a notice for that change in the law.

Supervisor Runion stated that a public hearing could be held to change the local law of 1993.

Discussion was held over the difference of opinion regarding definitions.

Ms. Bakner stated that there would not be a skilled nursing care home built on the site.

Councilman Pastore stated that the definition of nursing care homes was broad but within the definition certain restrictions were clearly stated.

He felt that the proposal fell within the parameters of what the past Town Board intended for this PUD.

Mr. Luntz stated that throughout the Planning Board minutes and other correspondence related to the determination to enact this legislation, it was clear that there were two separate models for senior care enacted for this PUD, one for assisted living in Phase 1 and a skilled nursing care facility in Phase 4.

He further stated that the site plan stated nursing home in Phase 4.

He objected to a determination being made at this meeting as the item had been placed on the agenda for the first time.

Supervisor Runion asked that Mr. Luntz provide a response to the Town Board in regard to the objections made.

Ms. Bakner asked that it be answered as quickly as possible as they have a site plan before the Planning Board.

Supervisor Runion asked that all objections by Mr. Luntz be in by the 6<sup>th</sup> of January, 2011 and Ms. Bakner's by the 11<sup>th</sup> of January so that the Board members would have everything in their agenda packets for the January 18<sup>th</sup>, 2011 meeting.

Continued until January 18<sup>th</sup>, 2011.

**MOTION #211** Councilman Redlich moved to **APPROVE THE TRANSFERS AS SUBMITTED BY TOWN COMPTROLLER, JEAN STERLING.** Councilwoman Slavick seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**MOTION #212** Councilman Redlich moved to **SET THE DATE FOR THE ORGANIZATIONAL MEETING ON JANUARY 4<sup>TH</sup>, 2011 at 7:30 PM.** Councilman Grimm seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**MOTION #213** Councilman Pastore moved to **ADJOURN THE DECEMBER 21<sup>st</sup>, 2010 TOWN BOARD MEETING AT 9:55 PM.** Councilman Redlich seconded the motion and it was carried by the following roll call vote:

Councilman Redlich	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**Respectfully submitted,**

**Rosemary Centi, Town Clerk**