

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

Supervisor Runion welcomed everyone to the evening’s meeting and asked for a motion accepting the minutes of the December 21, 2010 and the January 4, 2011 Town Board meetings.

MOTION # 20 Councilwoman Slavick moved to **ACCEPT THE MINUTES OF THE DECEMBER 21ST, 2010 AND THE MINUTES OF THE JANUARY 4TH, 2011 TOWN BOARD MEETINGS.** Councilman Pastore 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

AGENDA ITEMS:

Item #1 on the agenda concerned the request for interpretation of allowed uses in Mill Hill P.U.D. Phase 4 made by Crestmoor Mill Hill Community Corp. (Phase 4 Mill Hill P.U.D. permits a Nursing Home Facility and applicant proposes a Memory Care/Assisted Living Facility).

Supervisor Runion stated that this item was a continuation of the item from the December 21, 2010 meeting. It was a request for the allowed uses in the Mill Hill P.U.D., Phase IV. The applicant, Crestmoor Mill Hill Community Corporation, was proposing a memory care/assisted living facility on the site. Currently, the Mill Hill P.U.D., Phase IV, permits a “nursing home facility”. He further stated that the attorneys for Crestmoor and for Atria were asked to submit other documentation.

Supervisor asked that each of the applicants speak for five minutes regarding their respective issues.

David Luntz, attorney representing Atria, reiterated his client’s position in documents (P.7A-E) stating in part,

“This letter is also to reiterate that Atria Guilderland strongly opposes the recently proposed development in Phase IV. The proposed development is in violation of Town Law, is

inconsistent with the permissible uses in the Mill Hill P.U.D., and betrays the legislative findings and intent of the Mill Hill P.U.D., which was to provide a continuing spectrum of senior living care, and to encourage ‘the creation of mixed-use neighborhoods where **various levels** of independent/assisted living arrangements can co-exist...’ The Mill Hill P.U.D. expressly designates Phase IV to be developed as a skilled care nursing facility, not an assisted living residence.”

He further stated that it was made very clear in Planning Board documents, Town Board documents and other documents related to this development that the Mill Hill P.U.D was conceived, developed, approved, and enacted into law with the understanding and intention that a skilled nursing home was slated to be developed in Phase IV of the P.U.D.

He further stated that the applicant’s current request was essentially an improper request for the Town Board to issue a quasi - judicial opinion about legislation and the intent of legislation that was enacted almost twenty years ago. He stated that there was a process to change the law and that this was an attempt to short circuit the appropriate processes.

He further stated that Atria had spent considerable monies in the community to renovate, restore, and enhance a very run-down adult home.

For those reasons, Atria objects to the current application and objects to the request for the Town Board to issue a judicial determination about the meaning and intent of the Mill Hill P.U.D. legislation.

Councilman Redlich asked if the Town Board had the power to issue an interpretation or was it the Zoning Board’s.

Mr. Luntz stated that to issue a quasi judicial determination, it was the Zoning Board’s.

Councilwoman Slavick asked where the definition of “skilled nursing home” was to be found as it was not in the P.U.D.

Mr. Luntz stated that it was on the site plan but not defined in the P.U.D.

Councilman Pastore asked where it was stated that a “skilled nursing home” was to be built in Phase IV.

He further stated that he agreed with the concept the Town Board contemplated for a continuum of care for the elderly from one phase to another. He asked how one would account for the fact that there might be an evolution of care over the last nineteen or twenty years that affects the categorization of one type of building over the other. He further stated that Atria were indicating that it should only be a “skilled nursing home” but there is a definition in the Town Code of “nursing care home”.

Atria sought licensing for a change of, or an add on to the type of services that they provide and who is to say what was anticipated to be a nursing home in 1992 is different that what is contemplated now because of changes in laws.

Mr. Luntz explained the types of care. Atria was licensed as an adult home and later allowed to call themselves assisted living.

Councilwoman Slavick stated that “skilled nursing home” was not defined in the P.U.D and if the intent was for “skilled care nursing home” it would have been defined in Section 4.

Supervisor Runion explained that in taking a look at Section 4 definitions, there was already a definition in the Zoning Law 280-5 of a “nursing home”, so there was no reason for that definition to be included in Section 4, the other definitions contained in Section 4 were not included and required a clarification.

Councilman Pastore said, "If we're concerned about the "nursing care home" definition, there is clearly a definitional section in the Town Code for "nursing care home". I think an argument can be made that it is not inconsistent, the definition of "nursing care home", is not, although you would make the opposite argument, an argument can be raised that does not contravene the legislation. What do we do with the definition of "nursing care home"?"

Supervisor Runion stated Mr. Luntz was referring to the conceptual plans submitted by the developer. The local law only referred to the term "nursing home". Under the P.U.D. regulations, it was the Town Board's responsibility to establish density and the types of uses. They did not go beyond using the phrase "nursing home" with the number of beds. If they wanted to be more specific they would have said in the legislation "skilled nursing home".

Mr. Luntz stated that if the Town Board did not mean to make a distinction, why did they make a distinction.

He suggested that they go through the process of a public hearing.

Terresa Bakner, representing Adobe Blue Chip, owner of the property, referred to documents submitted. **(P 9A-E)** She said, "The position that we are taking is that it is appropriate for the Town Board to decide what they meant in terms of the P.U.D. designation."

She stated that the Town Board has a definition of "nursing care home". She further stated that there was no definition of "nursing home" in the local law and the Town Board could have provided one but they did not.

Ms. Bakner stated in her documents that, "Section 4 of the Local Law defined the terms "Independent Living Dwelling Unit", "Retirement Congregate Care Dwelling Unit", and "Residential Adult Home". The P.U.D legislation did not define "nursing home" in Section 4 or any of the other sections of the Local Law. Section 9 of the Local Law directed that "the necessary changes shall be made upon the zoning and departmental maps of the Town of Guilderland to indicate the location of the property that is now located in the P.U.D as defined and regulated pursuant to the provisions of the Town of Guilderland Zoning Law and zoning map of the Two of Guilderland as amended".

She further stated that there is not a missing definition. There was a pre-existing definition of "nursing care home" and that what they were proposing fell within that definition.

She stated that she saw nothing in the Local Law or in the legislative history that indicates that the Town Board sought to limit it to a "skilled nursing facility".

Ms Bakner stated in her documents in part, "The Town Board is constrained in this case to look at the definition of "nursing care home"- the only definition it has available to the Board under the law, since the local law refers only to nursing home, and to determine if the proposed memory care assisted living facility meets that rather expansive definition. In making this determination, you are bound by law to construe any ambiguities in the favor of the property owner Adobe Blue Brick LLC. There is absolutely no merit to Atria's claim that the Board is bound to protect their economic investment in their facility and claims of prospective economic harm are outside the scope of the Board's review authority".

Councilman Redlich stated that they had applicants who had come before the Board to change the P.U.D. and a public hearing was held. He felt that a public hearing should be held in this case. He further stated that he did not feel that it was up to the Town Board to make the interpretation.

Stu Markowitz described the facility services.

Councilman Grimm asked about the economic impact of either facility on the community.

Ms. Bakner stated that an assisted living facility is not subject to Medicaid reimbursement, that it would be a taxable entity.

Mr. Luntz responded that this was a topic more appropriate to a public hearing setting. He said that they were different models of care.

Further discussion was held regarding definitions and the intent of the Mill Hill P.U.D. legislation in Phase IV.

MOTION #21 Councilman Redlich moved to **SET A PUBLIC HEARING ON FEBRUARY 1, 2011 AT 7:30 PM FOR THE TOWN BOARD TO CONSIDER AMENDING LOCAL LAW #1 OF 1993, THE MILL HILL P.U.D LEGISLATION, SECTION 280, TO ALLOW AS A PERMITTED USE A NURSING HOME, NURSING CARE HOME, ASSISTED LIVING FACILITY AND/OR MEMORY CARE FACILITY.** 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 #22 Councilman Redlich moved to **APPROVE THE APPOINTMENT OF SHUYRE R. RABBE TO THE POSITION OF SENIOR KEYBOARD SPECIALIST(HIGHWAY DEPT.) FROM THE ALBANY COUNTY CIVIL SERVICE LIST.** 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

Item #3 on the agenda concerned the appointment of Brad Roberts to the position of telecommunicator from the Albany County Civil Service List.

Councilman Redlich questioned why a first tier applicant was not hired.

Supervisor Runion stated the applicants were interviewed by a committee, which made its recommendation.

MOTION #23 Councilman Pastore moved to **APPROVE THE APPOINTMENT OF BRAD K. ROBERTS TO THE POSITION OF TELE-COMMUNICATOR FROM THE ALBANY COUNTY CIVIL SERVICE LIST EFFECTIVE JANUARY 19TH, 2011.**

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

Councilman Redlich	Opposed
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye

Supervisor Runion Aye

MOTION #24 Councilman Redlich moved to **AUTHORIZE THE DEPARTMENT OF WATER AND WASTEWATER MANAGEMENT TO GO OUT TO BID FOR VARIOUS PROCESS CHEMICALS**. 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

Item #5 on the agenda concerned the transfer of \$5,000.00 from the Highway Superintendent line to the new consulting line to finance consulting services for Todd Gifford, retired Highway Superintendent, who is assisting the department until a new superintendent is appointed.

MOTION #25 Councilman Redlich moved to **APPROVE TRANSFERS AS SUBMITTED BY THE COMPTROLLER'S OFFICE**. 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 #26 Councilman Redlich moved to **ENTER INTO EXECUTIVE SESSION AT 8:57 PM TO INTERVIEW APPLICANTS FOR THE POSITION OF SUPERINTENDENT OF HIGHWAYS**. 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 #27 Councilman Redlich moved to **EXIT EXECUTIVE SESSION AT 10:01 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 #28 Councilman Redlich moved to **ADJOURN THE JANUARY 18TH, 2011 TOWN BOARD MEETING AT 10:02 PM**. 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

Respectfully submitted,

**Rosemary Centi
Town Clerk**