

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 Anna Russo, Deputy 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 February 1, 2011 Town Board meeting.

MOTION #37 Councilwoman Slavick moved to **ACCEPT THE MINUTES OF THE FEBRUARY 1, 2011 TOWN BOARD MEETING.** 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 re-scheduling and setting the public hearing in regard to a Cable Franchise Agreement by and between the Town of Guilderland and Verizon New York Inc. for March 1, 2011 at 7:30 PM. (Public Hearing for this evening is withdrawn as legal notice was not published by Altamont Enterprise as a result of snow storm which moved up date of publication)

Councilman Redlich asked if there would be a senior discount with Verizon as with Time Warner Cable.

Supervisor Runion stated that there would not be but that the issue could be discussed at the public hearing.

Marie Sbardella spoke regarding the issue. She asked if the Town, in their negotiations, could request the senior discount.

MOTION #38 Councilwoman Slavick moved to **SET THE PUBLIC HEARING IN REGARD TO A CABLE FRANCHISE AGREEMENT BY AND BETWEEN THE TOWN OF GUILDERLAND AND VERIZON NEW YORK INC. FOR MARCH 1, 2011 AT 7:30 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

Item #2 on the agenda is to consider authorizing the Supervisor to sign a Stormwater Management Maintenance and Easement Agreement with New York Independent System Operator (NYSIO) in connection with an expansion project on Carman Road.

Councilman Redlich questioned the agreement and asked that some corrections be made. He also asked for emergency language in the agreement.

Dave Everett, Attorney for NYISO, asked for questions.

Gary Weyland, Project Manager, stated that it was a data center. No change would be made to the stormwater flow.

Supervisor Runion asked that the issue be tabled pending the corrections and new language. Item tabled until March 1, 2011.

MOTION #39 Councilman Redlich moved to **AUTHORIZE THE DEPARTMENT OF WATER AND WASTEWATER MANAGEMENT TO GO OUT TO BID FOR WATER FILTRATION GRANULATED ACTIVATED CARBON FOR 2011 AND 2012.**

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

PUBLIC HEARINGS:

8:00 PM – Local Law re: Allowed uses in Mill Hill PUD Phase 4

Terresa Bakner, attorney for Crestmoor Hill, gave a brief history of the proposal. She stated that Crestmoor Hill has come to the Town to ask for site plan approval for an assisted living, and memory care facility, as well as a medical arts building, in Phase IV of the Mill Hill PUD. The Mill Hill PUD was approved years ago and has been amended several times over the course of many years. The Town Planning Board asked the applicant to come to the Town Board and ask for their guidance as to whether the memory care facility was allowed in the PUD. Communication continued between both parties regarding the issue.

The Town Board felt that it would be clearer, for the record, if instead of an opinion, the local law was amended. This would be the fifth amendment to the PUD.

The applicant was present for the public hearing regarding the amendment to the local law establishing the PUD. Ms. Bakner stated that the Town Board has “unfettered authority” to amend local laws, to amend PUD’s and to amend zoning.

She reiterated why this was a good proposal for the property.

Stu Markowicz, architect for the project, showed the general layout of the project to the public and the Town Board.

The proposal calls for 114 units with a bed count that might go up to 142 beds.

The original PUD called for a nursing home with 160 beds. The original PUD called for an office building with 12,000 square ft., this proposal called for an office building with 11,000 square ft.

Councilwoman Slavick asked if the medical building would also be the office building. Mr. Markowicz stated that it would.

Ms. Bakner stated that they had provided NYS Department of Health information to the Town Board on the number of nursing home beds, and residential health care facility beds licensed by the NYS Department of Health that could be built in Albany County and she believed it was less than three. She directed the Board to the handouts submitted.

She further stated that if this type of facility were not built in Mill Hill Phase IV, the likelihood would be that nothing would be built in Phase IV. She stated that if one wanted to build a traditional, licensed, residential health care facility there, it would be impossible at this time to get a Certificate of Need from the Department of Health.

She further stated that NYS Department of Health currently has a policy where they are encouraging existing nursing homes to give up nursing home beds in favor of assisted living type beds. This predominantly relates to Medicaid reimbursement rates and a desire to have a different type of living facility for people who are elderly.

Deputy Town Clerk, Anna Russo, read the legal notice.

David Luntz, representing Atria Guilderland, stated that they would like to make a more comprehensive presentation to the Board as to why this proposed change in the zoning laws is contrary to the intent of PUD for Mill Hill and why it undermines the planning process, and a developer, such as Atria's, reliance that the existing PUD would be recognized by the Town and that they came here and could develop with in reliance on that and with their investment backed expectations regarding the state of the law and the state of the zoning law of the Town. He further stated they would also like to present some additional information as to why there are serious concerns about the viability of the proposed development and why this change in the law would be adverse to the interest of the Town as a whole.

Jim Lane, Development Planning Director, representing Atria Senior Living in the Northeast Region, read a prepared statement regarding Atria's presence in New York, the acquisition and the renovation of the Phase I PUD in Mill Hill, the proposed Phase IV application and differences between skilled nursing and assisted living.

He said, "It's fundamentally unfair and inequitable to change the permissible rules within the PUD after Atria has made such substantial investments and contributions to its success".

Councilman Redlich asked if this were not a risk that they took that, when you build, the zoning could change around you.

Mr. Lane felt that this change at this time was not well thought out.

He further stated that the express purpose of the Mill Hill development was to provide a continued spectrum of senior care and to encourage the creation of mixed use neighborhoods where various levels of independent assisted living arrangements can co-exist.

He said, "The PUD expressly provided that Phase I was to be an adult home and Phase IV was to be a skilled nursing facility".

He continued reading.

Councilman Grimm asked why it was up to the Town Board to make a determination as to whether a project was viable or not.

Mr. Lane stated that they relied on the PUD and assumed a skilled nursing facility was going into the PUD. They were here before the Board to have them stick to the PUD.

Councilwoman Slavick asked if the fact that the need in Albany County is only for three skilled nursing beds, would that not fail also.

Terresa Bakner clarified that Albany County, according the NYS Department of Health determination, had a need for 15 beds. She further stated that it would not be possible to get certification for this number of beds.

Supervisor Runion asked if the competition would make it more affordable. Neither facility would accept Medicaid patients.

John Federman, on behalf of Atria, spoke on the difference between private pay assisted living and Medicaid funded assisted living. He also mentioned the impact on Guilderland emergency services.

Councilman Pastore asked what the difference was between adult home and assisted living facility.

Mr. Lane explained licensure requirements and certification requirements.

Councilman Pastore asked if it was a question of semantics for both adult home and assisted living facility or the level of care provided.

Mr. Lane stated that there really was not a difference in the care provided but within the social model there were meaningful differences.

Supervisor Runion stated that whatever was envisioned in 1993 never came to fruition. This legislation was changed so many times. It was the Town Board's obligation to determine what the best use was for the property in Phase IV. To get to that point, the Board would have to grapple with the fact of whether a nursing home is a viable use on this property under current State standards.

He further stated that after everything he had heard and all the data that he had seen indicates that a nursing home would never be built on the property.

He further stated that either they look at a slightly less standard of care or the Town Board come to the point of view that this parcel would not be built on or single family homes would be built.

He said, "What you made here and what you continue to make is an anti-competitive argument".

He stated that he would like to hear why an assisted living facility wouldn't be a good use for this property other than competition.

Councilman Redlich stated that if a skilled nursing home will not be built, is it premature to say a skilled nursing home would not be in demand in the future.

Councilman Grimm asked what would be the direct impact on the residents.

Mr. Lane stated they were worried about the viability of the product.

Mr. Luntz stated that a SEQR would be required along with traffic studies if this proposal were approved.

Supervisor Runion stated that there is now a traffic light at the site, there are sidewalks, and the density for the property has been reduced.

He further stated that he did not feel that Atria could rely on the original 1993 PUD legislation because multiple changes had already occurred within that legislation.

Supervisor Runion stated that a vote could not be held this meeting as they were waiting for the Albany County Planning Board recommendation.

Joe Nicolla, Ridgehill Road, stated that Albany County had 425 skilled nursing home beds that were reduced to 250 beds. One of the reasons was that the County is losing money running the facility. He further stated that competition was good and that the Town needed rateables, which would increase the tax base. This would not cause a burden on the school district.

This property would also create jobs.

Mike DeLima, West Highland Drive, agreed with Mr. Nicolla stating that he, too, was in favor of the amendment.

Richard Rosen, Dedham Post Road, stated that what was being proposed to the Town Board was a not a major change in use. This will provide construction jobs, and a tax base. He further stated that things in health care have evolved. He wanted to lend his support to the Town Board and to commend the Town Board for sitting through the process.

Robin Scrodanus, 1042 Meadowdale Road, stated that her mother who is in her 80's, is not looking for skilled facilities. She is in favor of the competition and would like to see more facilities in the area.

Michelle Coke, Evelyn Dr., stated that she supports the addendum. This would merely clarify or add to the definition. The competition could only help things.

Tim Ruland, 12 Wallace Lane, stated that he had spent the last five years driving to Vermont for this type of facility and that the Town needed the competition.

Terresa Bakner stated that the Town Board is not the guarantor of the success of Crestmoor Hill. They have done their own studies and are confident that this facility would be successful.

She further stated that since 1993 a nursing home could have been built here, and it had not been built here. From then until now there has not been the ability to obtain a Certificate of Need to provide skilled nursing beds in this county.

She further stated there was a huge tax benefit. On the continuum of care, the intent expressed in the local law was not so inflexible that it was incapable of evolving. The Town Board has the discretion to amend the zoning and the PUD is zoning. She further stated that the intent of the local law was to establish appropriate care including assisted living which is included in the legislative intent.

This project will provide taxes, jobs, competition, and choice. The residential adult home was always at this location.

She further stated that the only thing that was being asked was that the definition of nursing home, which was not put in the local law, now be conformed to the definition of nursing care home that the Town has in its zoning code, as well as adding the words assisted living facility and memory care.

This project is providing many more beds for memory care.

Mr. Bowman addressed the issue of licensing. He gave a brief history of the changes in terminology in the health care field.

He further stated that the State does not want any more nursing homes. They want to create a more residential, more humane environment in order to keep people in their own homes longer.

He further stated that the need for memory care was going up.

Supervisor Runion stated that the Town Board would set a maximum density for the PUD.

Councilman Redlich asked about the health department approval process.

Councilman Pastore asked why this was not an abuse of discretion for the Town Board to change the legislation.

Ms. Bakner stated that the standard was not the abuse of discretion for zoning changes. This was a legislative decision and the Town had the broadest authority as to whether they wanted to change zoning.

She further stated that she did not believe that the PUD was drawn as precisely as Mr. Luntz would like to convince the Board that it was and that the Town Board had the authority to decide on the change.

Councilman Redlich asked for comment on the SEQR.

Terresa Bakner stated that anytime the Town of Guilderland adopts a local law, a SEQR would be necessary. She further stated that reviews had been done after the law had been changed with Phases II and III. Traffic was examined and they had trouble establishing that they had enough traffic for a warrant.

All the water from the property would be treated appropriately and in accordance with the law.

A short form SEQR would be all that was required.

Councilman Redlich asked if an urgent care facility would be considered for the property. Mr. Bowman said that it could be considered.

Public Hearing continued until March 1, 2011.

MOTION #40 Councilman Redlich moved to **ENTER INTO EXECUTIVE SESSION AT 9:44 PM TO INTERVIEW APPLICANTS FOR THE POSITION OF HIGHWAY SUPERINTENDENT.** 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

Please note that the Town Board will be interviewing three (3) applicants for the position of Highway Superintendent this evening. A special meeting of the Town Board has been called by the Supervisor pursuant to Section 62(2) of the New York State Town Law for Thursday, February 17, 2011 at 7:30 PM at Guilderland Town Hall to interview four (4) additional applicants for Highway Superintendent. At the March 1, 2011 Town Board meeting, second interviews, if needed will be conducted.

MOTION #41 Councilman Redlich moved to **EXIT EXECUTIVE SESSION AT 11:10 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

MOTION #42 Councilman Redlich moved to **ADJOURN THE FEBRUARY 15, 2011 TOWN BOARD MEETING AT 11:11 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, RMC
Town Clerk**