

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 February 15, 2011 Town Board meeting.

**MOTION #43** Councilwoman Slavick moved to **ACCEPT THE MINUTES OF THE FEBRUARY 15, 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**

**PUBLIC HEARINGS:**

**7:30 PM – Franchise Agreement by and between the Town of Guilderland and Verizon New York, Inc.**

**Town Clerk, Rosemary Centi, read the legal notice.**

Rich Hillstrom, Franchising Manager and business lead, explained the move by Verizon to come into the area with fiber optics for cable service. Verizon already provides internet and phone service. The agreement will need to be confirmed by the New York Public Service Commission.

He thanked Supervisor Runion, and Town Attorney, Richard Sherwood for their considerable time spent in the negotiation process. He also thanked Tom Quaglieri, "What's Happening Productions" and Nick Viscio, from the High School.

He read a statement reviewing the benefits of Verizon such as real cable competition, a dedicated government access channel from the High School and Town Hall and dedicated fiber cable running right to the home. Five percent of the revenue will come to the Town of Guilderland.

A competitively neutral PEG grant would be provided which would consist of two options, either a per subscriber, per month grant, equal to what Time Warner agrees to provide, not to

exceed .5 per subscriber per month, or, if Time Warner opts not to provide a per sub per month grant, 25% of the total cash grant amount provided by Time Warner with a cap of \$13,500.00.

The agreement also offers a 5% franchise fee paid quarterly to the Town and is based on a comprehensive definition of gross revenue.

Mr. Hillstrom stated that they already offered phone and internet; Verizon needed an agreement for cable TV service.

The agreement called for a 5-year build - out based on density. (The Franchise Agreement will be available in the Town Hall offices).

This was exclusive of the Village of Altamont.

Sam Caldwell, 158 State Street, Verizon employee, responsible for government and external affairs for upstate New York, thanked the Board for their indulgence and asked that the Board approve the franchise.

He read a letter from Richard Connery asking that the Town approve the franchise agreement. **(P 25A)**

John Fogarty, attorney employed by Time Warner Cable, expressed his concern that there was an assurance of a "level playing field" and that the terms and benefits of the agreement were equitable.

He stated that given the timing of the agreement, Time Warner was committing to .5 per approach in support of PEG.

Councilman Grimm clarified that what was being asked was that every cable operator be treated the same way and that was .5 per subscriber.

Mr. Hillstrom stated that it was either one or the other and that he was glad that Time Warner agreed to the .5 per subscriber.

He read the two options that were offered in the agreement and clarified the intention of certain sections of the agreement.

A discussion followed regarding various sections of the agreement

Supervisor Runion discussed the .5 per subscriber section. He stated that the Town submitted to both Verizon and Time Warner what the anticipated needs would be for the PEG channel, which was a specific amount of money.

Both providers met with various people and found out what the legitimate needs would be for both the Town and the school district, and they agreed on a number that would be needed.

Councilwoman Slavick asked if there would be any discount for senior citizens and Mr. Hillstrom stated that Verizon did not discriminate and that there would not be a discount.

Further discussion was held regarding the agreement relative to the provisions for the PEG monies.

Marlene Jefferson, Guilderland resident and Verizon employee, read a letter from the Guilderland Chamber of Commerce expressing their encouragement for the franchise agreement. **(P 26A)**

John Vandenberg, Veeder Road, spoke on the benefits of Verizon and requested that the Board approve the agreement.

Supervisor Runion explained that the agreement was for cable television and not the Internet.

Matt Schewe, Drawbridge Dr., stated that he welcomed the competition and the ability to have an option rather than a monopoly.

Bill Stuart, Meadowdale Road, also stated that he welcomed the choice. He did not feel that it was a “level playing field” between Verizon and Time Warner Cable right now.

Jose Moore, Abelman Avenue, stated that he was an employee of Verizon and was for choice and competition.

Tom Moran, Newcastle Road, asked how long the build would – out take and would it include the whole Town.

Supervisor Runion stated that it was his understanding it would be to the whole Town that falls within a certain density level similar to the Time Warner franchise agreement. He further stated that there was a five year build-out for the Town exclusive of the Village of Altamont.

Levidia Lugo, French’s Mill Road, Verizon employee, stated that it would be good to have a choice and to see great technology. She thanked the Board for allowing this to happen.

**MOTION #44** Councilman Redlich moved to **CLOSE THE PUBLIC HEARING ON A FRANCHISE AGREEMENT BY AND BETWEEN THE TOWN OF GUILDERLAND AND VERIZON NEW YORK, INC.** 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 #45** Councilman Redlich moved to **AUTHORIZE THE SUPERVISOR TO SIGN A FRANCHISE AGREEMENT BY AND BETWEEN THE TOWN OF GUILDERLAND AND VERIZON NEW YORK, INC.**

**Resolved,**

**Awarding a cable television Franchise to Verizon New York, Inc. to provide cable service to the Town of Guilderland and approving a Cable Franchise Agreement with Verizon New York, Inc.**

**WHEREAS, Verizon New York, Inc. desires to use its' network to provide cable television service in the Town of Guilderland and**

**WHEREAS, Verizon New York, Inc submitted a written application for a cable franchise to the Town on February 2, 2011 and**

**WHEREAS, due negotiations between the Town of Guilderland and Verizon New York, Inc. have resulted in a proposed "Cable Franchise Agreement" by and between the Town of Guilderland and Verizon New York, Inc., which proposed agreement was filed with Town Clerk of the Town of Guilderland on February 2, 2011, and**

**WHEREAS, on February 15, 2011, the Town Board scheduled a public hearing as required for March 1, 2011 at 7:30 PM to consider a Cable Franchise Agreement by and between the Town of Guilderland and Verizon New York, Inc., and**

**WHEREAS, said public hearing was legally noticed as required by law, and**

**WHEREAS, on this night, March 1, 2011 at Town Hall a public hearing was held on the proposed agreement,**

**NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Guilderland authorizes the award of non-exclusive franchise to Verizon New York, Inc. to own, construct, operate and maintain a cable system along the public rights -of – way within the Town of Guilderland in order to provide cable service and,**

**BE IT FURTHER RESOLVED, that the Town Board authorizes the Town Supervisor to enter into the franchise agreement with Verizon New York, Inc. as attached and execute any and all documents necessary to effectuate the granting of the Franchise on behalf of the Town of Guilderland.**

**The foregoing resolution was presented for adoption by Councilman Redlich seconded by Councilwoman Slavick and approved by the following vote:**

**Ayes: Councilman Redlich, Councilwoman Slavick, Councilman Pastore, Councilman Grimm, Supervisor Runion**

**Noes: None**

**Dated: March 1, 2011**

**Break: 9:03 PM    Returned: 9:10 PM**

**Agenda Items:**

Item #1 on the agenda concerned the Town Board vote on a Local Law amending the Mill Hill Planned Unit Development, Phase IV. (PUD)

A letter was submitted to the Town by Atria detailing their proposal.

A letter in response to Atria's proposal was submitted by Crestmoor Hill. **(P 27A-B)**

David Luntz, Counsel for Atria Guilderland, reiterated their objection to the proposed change. He stated that in response to a question posed by the Town Board as to whether there could be a compromise, they looked at a number of factors and came up with a compromise proposal.

Jonathan Federman walked the Board through the specifics of the proposal.

Mr. Federman stated that looking at what a potential compromise might be, and to try to stay consistent with what they believed the intent of the Mill Hill PUD was, Atria saw three potential areas that the Town Board could consider which were density, use, and affordability.

Jim Lane, in response to Councilman Redlich's question, stated that Atria would not be interested in expanding their facility.

Terresa Bakner, counsel for Crestmoor Hill, stated that the current proposal was for 114 units with 142 beds, which is less density than what was allowed.

She further stated that there was no limitation on Atria to expand. There was no objection to their expanding.

She further stated that all they wanted to do was to preserve the ability to go ahead under the PUD, which, in their opinion, is a "nursing care home". She further stated that there is no definition of "nursing home" in the PUD. The Zone Code defines it as "nursing care home" and their proposal fits within that definition.

She stated that they are predominantly a memory care facility.

She further stated that the proposal is less dense than what was previously proposed and the local law clarified what the relationship is between nursing care home and nursing home in the PUD.

She urged the Board to move forward and act on this and not allow the restraint on competition.

David Luntz agreed that "nursing home" is not defined but that in the legislation of Phase IV it was supposed to be a "skilled nursing home" and that was the reason the density was higher.

The applicant's proposal for an assisted living residence is a different model of care and should have a lower density. He further stated that the applicant should not have the benefit of the higher density.

Councilman Redlich asked if it were true that Atria was not limited to 100 beds.

Mr. Luntz stated that the residential adult home model, including Phase I of Atria, had a maximum density of 100 units.

He further stated that their request was for a "level playing field" and to limit the density of Crestmoor's proposal.

Ms. Bakner stated the density of the site and the arrangement of the site was up for the Planning Board to decide.

Councilman Pastore asked if the number of units allowed would determine whether the project would be completed.

Ms. Bakner stated that it came down to choice and competition. There still were a number of issues that had to be dealt with.

Mr. Luntz stated that the density limitations were designated by use not by phase.

Supervisor Runion read a memorandum from Town Planner, Jan Weston (**P 29A**) and an opinion from the Albany County Planning Board. (**P 29B**)

**MOTION #46** Councilman Redlich moved to **CLOSE THE PUBLIC HEARING ON A LOCAL LAW AMENDING THE MILL HILL PLANNED UNIT DEVELOPMENT.**

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

Discussion was held by the Board on various issues regarding the applicant's proposal. Supervisor Runion explained that he believed that the argument was over the density allowed.

Terresa Bakner stated that Atria, as a residential adult home, had never sought to have its definition changed.

She further stated that the Town has a definition of nursing care home and that the applicant fell within it. They did not have any objection to Atria adding more units.

They were reducing the density allowed and that they were not appearing before the Board in restraint of competition.

Councilman Pastore asked if Atria fell within the proposed definition of nursing home to allow it to expand.

Mr. Luntz stated that both fell within residential adult home maximum but what the applicant wanted to do was to get the higher density of the skilled nursing home with the social model of assisted living.

Councilman Pastore stated that the characterization did not consider the evolutionary process of adult care, assisted living facilities, over the last seventeen years.

Mr. Luntz stated that he felt Atria had proposed a compromise of 100 units that made sense.

Councilman Pastore stated that he felt the Board was getting beyond what the application was all about, to amend the local law and in particular to define "nursing home".

He stated that he felt more comfortable with the Planning Board determining density.

Councilman Grimm also stated that it was not the place of the Town Board to determine numbers.

Councilwoman Slavick agreed stating that the charge was to add this definition to the PUD.

Supervisor Runion stated that the Board would need to adopt a **SEQR** for Local Law #1 of 2011 dealing with the definition of “nursing home” to include an “assisted living facility” or “memory care facility”. All questions have been answered in the negative except for question Part 2E, Is there or likely to be controversy related to potential adverse environmental impacts and that is marked yes. The application has been opposed by the owner of Phase I, Mill Hill PUD.

**MOTION #47** Councilman Redlich moved **THAT THE ADOPTION OF THIS LOCAL LAW WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.**

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

**MOTION #48** Councilman Pastore moved that **SECTION 4 OF LOCAL LAW #1 of 1993 BE AMENDED AS FOLLOWS: THAT NURSING HOME IS HEREBY DEFINED AS A NURSING CARE HOME AS SET FORTH IN SECTION 280-5 OF THE TOWN OF GUILDERLAND TOWN ZONING CODE AND IT IS ALSO DEFINED AS AN 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	Opposed
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Grimm	Aye
Supervisor Runion	Aye

**MOTION #49** Councilman Pastore moved to **AUTHORIZE THE SUPERVISOR TO SIGN AN AGREEMENT WITH THE TOWN OF COLONIE FOR USE OF THE TOWN OF COLONIE’S POLICE RANGE AND TRAINING FACILITY BY THE GUILDERLAND POLICE DEPARTMENT.** 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 #50** Councilman Redlich moved to **SET A PUBLIC HEARING ON A RE-ZONE REQUEST OF CARVER REALTY, LLC REGARDING 2969 W. OLD STATE ROAD FROM R-30 TO MR (MULTIPLE RESIDENCE) ON MAY 3, 2011 AT 7:30 PM.** 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

**MOTION #51** Councilman Redlich moved to **AUTHORIZE THE HIGHWAY DEPARTMENT TO GO OUT TO BID ON VARIOUS MATERIALS UTILIZED BY THE DEPARTMENT FOR 2011.** 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 #52** Councilman Redlich moved to **WAIVE THE BUILDING PERMIT FEE FOR 35 CHRISTINA DRIVE, HOUSE WAS DAMAGED BY FIRE.** 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

**MOTION #53** Councilman Redlich moved to **ENTER INTO EXECUTIVE SESSION AT 10:23 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 conducting second interviews of applicants for the position of Highway Superintendent during the executive session.

**MOTION #54** 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 #55** Councilman Redlich moved to **ADJOURN THE MARCH 1, 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**