

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 May 3, 2011 Town Board meeting.

MOTION #93 Councilwoman Slavick moved to **ACCEPT THE MINUTES OF THE MAY 3, 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 HEARING:

7:30 PM – Franchise Renewal Agreement between the Town of Guilderland and Time Warner Cable.
Town Clerk, Rosemary Centi, read the legal notice.

PLEASE TAKE NOTICE that the Town of Guilderland will hold a Public Hearing on May 17, 2011 at 7:30 PM at the Town Hall, 5209 Western Turnpike, Guilderland, N.Y. regarding the renewal of the cable television franchise agreement by and between the Town of Guilderland and Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable.

A Copy of the agreement is available for public inspection during normal business hours at the Town Clerk's Office, 5209 Western Turnpike, Guilderland, N.Y. At such Public Hearing all persons will be given an opportunity to be heard. Written or oral statements will be taken at the time. Time limitations may be imposed for each oral statement if necessary.

By Order of the Town Board of the Town of Guilderland
Dated: May 3, 2011

Mr. John Mucha, Director of Government Relations for the Northeast Region and representing Time Warner Cable, explained that this was a lease renewal. The current agreement had been signed in 1996 and since that time, a number of new products and new services have been launched.

The new agreement has a term of ten years and includes payments of 5% franchise fees to the Town, which is the maximum allowed by FCC rules.

Councilman Redlich asked about the objections by Verizon to the agreement.

Mr. Mucha stated that the free basic cable service to the PEG origination sites would be included in the agreement.

He also stated that the language in their agreement is correct regarding franchise fees and indemnification by third parties for the use of streets.

He further stated that Town agreed to have the Public Service Commission make the decision regarding language for the Verizon agreement and they asked to be treated equally.

Aldona Vitulis, Curry Road, stated the some time ago Time Warner took away the Guilderland access channel from residents on Curry Road and moved them onto the Town of Colonies' access and wanted to know if that would be addressed.

She asked if Time Warner would provide assurances that Guilderland residents will receive the same service

Supervisor Runion stated that he called Mr. Mucha with her concerns.

Mr. Mucha stated that he had not been aware of the issue and that they would put the channel where it belonged.

Supervisor Runion asked for an assurance from Time Warner Cable that all Guilderland residents have the same service.

Supervisor Runion asked that the letter regarding the revision be made part of the whole package and that it be transmitted to the PSC.

MOTION #94 Councilman Redlich moved to **APPROVE THE RENEWAL FRANCHISE AGREEMENT BETWEEN THE TOWN OF GUILDERLAND AND TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP d/b/a TIME WARNER CABLE AND INCOPORATED BY REFERENCE OUR LETTERS DATED MAY 17TH, 2011 FROM TIME WARNER CABLE AND VERIZON DATED MAY 16TH, 2011. IT IS ALSO A CONDITION OF THE APPROVAL THAT TIME WARNER CABLE TRANSMITS BOTH LETTERS TO THE PSC UPON SEEKING APPROVAL OF THE RENEWAL AGREEMENT.** 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 #1 on the agenda concerned whether to set a public hearing on request of John Celebucki to rezone 3423 Carman Road from BNRP (Business Non-Retail Professional) to LB (Local Business).

Mr. Mark Myers, attorney for the applicant John Celebucki as well as Jason Celebucki, explained the need for the rezone. He stated that the rezone would allow his client to operate a lawn care business on the site. He further stated that his client did not operate a landscape facility on the site.

Mr. Myers further stated that Mr. Celebucki has been operating the business out of zone and those charges were pending in Bethlehem town court.

Discussion was held regarding verbiage in the Zone Code.

Supervisor Runion read from a memo from Town Planner, Jan Weston which stated:

COMMENTS

The applicant has run a landscaping business, without a special use permit, from this location for many years. He has been cited that the business is not in conformance with zoning, has been in front of the ZBA numerous times, and it has gone to court. As instructed by the Zoning Board of Appeals (minutes attached), the only remedy would be a rezone or a use variance. However, the only districts that allow this use are the Agricultural and Rural Agricultural districts. I am not sure why the applicant has applied for a Local Business designation that would still not allow the landscaping business. Further, rezoning this single property to Local Business would open it up to any use allowed in the LB zone.

I am also concerned about starting an unwanted precedent of granting rezone requests for non-conforming uses that illegally occupy a site.

He stated that the applicant cited a professional type use which he did not believe this was. There were no retail sales on the property.

Further discussion was held regarding the term “professional”.

Mr. Myers stated that a number of properties surrounding the site were already designated LB.

Supervisor Runion stated that Ms. Weston’s memo said that in order to conduct this business the property would have to be zoned Rural 3, Rural 5, or Agricultural and that would be spot zoning.

He asked Mr. Myers what type of equipment was being stored on the property.

Councilman Pastore asked about the pending litigation and whether any determination had been made as to what this business can be defined as.

Mr. Myers stated that it had not. He further stated that Town Zoning Law did not define what “operating a business” is and also it did not address a lawn maintenance business.

Further discussion was held.

Councilman Redlich felt that a public hearing should be held so that the neighbors have a chance to speak.

Supervisor Runion stated that a number of issues being brought up by the applicant should be brought up before the Zoning Board of Appeals.

He read the recommendation of the Albany County Planning Board stating that a review was made by the Department of Transportation requiring a change in width to the entrance of State Route 146.

Mr. Myers stated that the DOT would be coming to review the site.

Councilman Pastore expressed his concern with hearing a rezone request for a property that is the subject of litigation.

Rodger Stone, Zoning Enforcement Officer, stated that Mr. Celebucki went to the Zoning Board of Appeals for an interpretation of the denial by Mr. Cropsey, Zoning Administrator, for the operation of this lawn maintenance, landscaping business and it was upheld.

Supervisor Runion read from the minutes of that Zoning Board of Appeals meeting.

“This is a request by Jason Celebucki of 4 C's Landscaping to determine whether or not a landscaping or lawn service business is a use permitted within a BNRP zone by means of a special use permit for property located at 3423 Carman Road.

The Board first notes that the Board has limited jurisdiction or responsibilities to interpret the code and they have no jurisdiction to rewrite the code. The applicant has described his business as being a landscaping business and lawn service. 280-19 of the code sets forth the uses allowed in a BNRP zone and none of the listed uses would appear to qualify. The one use that someone might think is similar is a licensed professional but as the applicant indicated, he is not a licensed professional.

The Board further notes that a landscaping business is allowed by special use permit but only in agricultural zones, rural 3 district zones and rural 5 district zones.

Therefore, the Board upholds the Zoning Administrator's determination that the landscaping and lawn service use is not a use permitted in a BNRP district. The Board however notes that the applicant has the right to apply for a use variance with this Board of to seek a rezone with the Town Board in an attempt to satisfy his needs as stated in his application.”

Mr. Myers stated that this was talking about lawn maintenance and landscaping business in BNRP, not allowed. We know that, we are trying to do that in an LB zone.

Supervisor Runion stated that the landscaping business as described would only be allowed by Special Use Permit in an Agricultural Zone, Rural 3 Zone and a Rural 5 Zone.

Rezoning to LB would not allow for the use. He further stated that the Zoning Board of Appeals would have taken testimony as to what Mr. Celebucki's business is.

He stated that what would be more appropriate would be to ask the Town Board to draft a local law to allow this type of business in this zone or to include the definition of a lawn care business or a landscaping business in one of these districts.

Mr. Myers stated that he would do whatever the Town Board liked.

After further discussion, the issue was referred to the Zoning Review Committee.

MOTION #95 Supervisor Runion moved to **APPOINT/REAPPOINT THE FOLLOWING INDIVIDUALS TO THE ETHICS BOARD:**

- a. **Robert Haines (D)**
- b. **Todd Vandervort (R)**
- c. **Christopher Knauf (C)**
- d. **Michael Rest (R)**

e. Peter Sparano (D)

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 Opposed – “I think there are people watching today who are probably saying I would have liked to have been considered for these positions and they weren’t aware of it. This was added as an agenda item late Friday afternoon. That’s the first that we’ve heard of it. So, I wasn’t even aware these appointments were coming up. I really think people should have an opportunity to one, be aware of this opening, and contact us to see if they have suitable resumes. So under these circumstances, I cannot support this”.

Supervisor Runion	Aye
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MOTION #96 Councilwoman Slavick moved to **AWARD BIDS FOR VARIOUS HIGHWAY MATERIALS FOR THE YEAR 2011.** 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 #97 Councilman Redlich moved to **AUTHORIZE THE SUPERVISOR TO SIGN A COLLECTOR’S WARRANT FOR THE GUILDERLAND WATER DISTRICT IN THE AMOUNT OF \$394,558.60.** 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 #98 Councilman Redlich moved to **ENTER INTO EXECUTIVE SESSION AT 8:55 PM IN REGARD TO COLLECTIVE BARGAINING AGREEMENT WITH THE POLICE BENEVOLENT ASSOCIATION.** 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 #99 Councilwoman Slavick moved to **RATIFY THE PBA CONTRACT AS PROPOSED**. Councilman Pastore seconded the motion and it was carried by the following roll call vote:

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

MOTION #100 Councilman Redlich moved to **EXIT EXECUTIVE SESSION AT 10:00 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 #101 Councilwoman Slavick moved to **ADJOURN THE MAY 17TH, 2011 TOWN BOARD MEETING AT 10:02 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, RMC
Town Clerk**