

REGULAR TOWN BOARD MEETING  
TOWN OF CHATHAM  
488 Route 295, Chatham, NY 12037  
July 16, 2015  
7:00 P.M.

**PRESENT:** Supervisor Jesse DeGroot, Councilman Jean Rohde, Councilman Maria Lull, Councilman Bob Balcom, Councilman Henry Swartz, Highway Superintendent Joe Rickert, Town Clerk Beth Anne Rippel, Assessor Clerk Julia Horst, Town Attorney Tal Rapplelea

**Others present:** Jan Storm, Robyn Reynolds of Climate Action Assoc., John Wapner, Jeanette Linville and several others.

**CALL TO ORDER**

Supervisor DeGroot called the meeting to order at 7:00 P.M. and led the pledge to the flag.

**CORRESPONDENCE**

A. Tobacco Free Action of Columbia & Greene Counties, re: Tobacco free policy

**PUBLIC COMMENT**

None

**REPORTS**

A. Highway - report on file

-Discussion was had about scheduling the grand opening of the bridge on White Mills Road. DeGroot he will contact the Lanphear family and let everyone know the date and time.

-EC bridge update: Preliminary design plans have been submitted to NYS DOT, awaiting approval and permit.

-They will start the roof on the highway garage next week and the bid package is out for putting on the new roof.

-The dog kennel/holding area at the highway garage has been researched and the cost of this project will run around \$5,051.05

-DeGroot and Rohde agree that this is a good idea.

-Lull asked about the liability. Rapplelea stated that there is an "assumption of risk" in the care of dogs.

-DeGroot suggested that this be a discussion for budget time.

B. Recreation Department – report on file

C. Code Enforcement/Zoning Enforcement – report on file

D. Dog Control – report on file

E. Environmental Management Council – Discussion on the Climate Smart Community Resolution

-Lull asked if this starts with an audit. Robyn Reynolds said that the Town can start with a greenhouse gas audit.

- DeGroot asked if DEC has weighed in on this. Reynolds responded that it's DEC language and they are in open communication with DEC.

-DeGroot, what is climate smart land use? Reynolds, it comes from developing land use areas with less impact such as cluster developments. Increase community use of renewable energy. Encourage people to purchase clean energy. There are incentives for large and small scale solar.

-DeGroot, how do you decrease community energy use? Reynolds, municipal and residential programs, lights off, low flow flush toilets, recycle, commit to reduce emissions.

- Balcom asked what "enhance community resilience" means. Reynolds responded that it refers to climate adaptation measures, for instance, how storm water runs off, permeable pavement, retention ponds, "best practices".

- DeGroot, if the Town signs on are there penalties if we don't do a part? Reynolds responded that there are no penalties, no legal risk. The Town can do as much or as little as they like.

- Rohde wanted to know if there's a template on what measures to look for. Reynolds said that there is a certificate program of 130 things the Town can do. The program is flexible and a way to engage the community. She will work with us to plan out immediate through long term goals. They can find interns to do some of the work.

- Rohde wants to include the comp plan. There are things we need to do.

- Lull asked Jan Storm to be the point person.

- Jan said that Chatham could be a leader, green infrastructure, there is money available.

- DeGrootd said that they would look around for someone who might be interested in being the point person. We have already changed over the lighting at the highway garage; can we get a credit for that?

**RES. #91-15**

Councilman Swartz moved and Supervisor DeGrootd seconded that

WHEREAS, the Town of Chatham believes that climate change poses a real increasing threat to our local and global environment which is primarily due to the burning of fossil fuels; and

WHEREAS, the effects of climate change will endanger our infrastructure, economy and livelihoods; harm our farms, orchards, ecological communities, including native fish and wildlife populations; spread invasive species and exotic diseases; reduce drinking water supplies and recreational opportunities; and pose health threats to our citizens; and

WHEREAS, we believe that our response to climate change provides us with an unprecedented opportunity to save money, and to build livable, energy-independent and secure communities, vibrant innovation economies, healthy and safe schools, and resilient infrastructures; and

WHEREAS, we believe the scale of greenhouse gas emissions reductions required for climate stabilization will require sustained and substantial efforts; and

WHEREAS, we believe that even if emissions are dramatically reduced today, communities would still be required to adapt to the effects of climate change for decades to come,

IT IS HEREBY RESOLVED that the Town of Chatham, in order to reduce greenhouse gas emissions and adapt to a changing climate will

1. Pledge to be a Climate Smart Community
2. Set goals, inventory emissions, plan for climate action
3. Decrease community energy use.
4. Increase community use of renewable energy
5. Realize benefits of recycling and other climate-smart solid waste management practices.
6. Reduce greenhouse gas emissions through use of climate-smart land-use tools.
7. Enhance community resilience and prepare for the effects of climate change.
8. Support development of a green innovation economy.
9. Inform and inspire the public.
10. Commit to an evolving process of climate action.

**VOTE**

AYES: DeGrootd, Swartz, Lull, Balcom and Rohde    NAYS: None    Resolution adopted

F. Justice Court – report on file

G. Assessors – report on file

H. Zoning Implementation Committee – Rappleyea said they are in the final steps and anticipate another few months. They are discussing steep slopes and ridge lines and how an applicant can minimize impacts to those zones. Swartz said that Don Meltz is working on the mapping changes and updates.

**RES. #92-15** to authorize Don Meltz to obtain information from the Columbia County Office of Real Property. Councilman Rohde offered RES. #92-15 and moved its adoption to authorize Don Meltz to obtain information from the Columbia County Office of Real Property. Councilman Balcom seconded the motion.

**VOTE**

AYES: DeGrootd, Swartz, Lull, Balcom, Rohde    NAYES: None    Resolution adopted

I. Supervisor (county business)

J. Town Comptroller – report on file

K. Town Clerk

L. Citizen Finance Committee

**NEW BUSINESS**

A. Tobacco free policy

- DeGrootd asked the Board if there was interest in this resolution. Highway Superintendent Rickert said they have a designated smoking area at the garage. It is not a problem at the Town Hall and the Park is already designated Smoke-free. So there doesn't appear to be a need to act on this.

**OLD BUSINESS**

A. Life Serve Youth Foundation moratorium waiver request.

Rappleyea gave a recap of the resolution.

**RES. #93-15** denying the application of Adam Slone/Life Serve Youth Foundation hardship waiver from moratorium Local Law #1-2015. Councilman Balcom offered RES. #93-15 and moved its adoption. Councilman Rohde seconded the motion.

**Discussion;** Rappleyea advised that the Board do this in executive session under attorney client; he

doesn't want to discuss recommendations in public. We can do it in public but he doesn't recommend it. Lull suggested the Board take Rappleyea's advice.

Resolution reads as follows:

WHEREAS, the Town Board of the Town of Chatham enacted Local Law #1, 2015 entitled "A Local Law Imposing a Temporary Twelve Month Moratorium on Special Use Permits and Site Plan Review for Parcels Located on Unpaved Town Roads" which included a variance process for applicants aggrieved of the moratorium to possibly obtain relief therefrom, on February 19, 2015; and

WHEREAS, Adam Slone/Life-Serve Youth Foundation (herein after referred to as "Applicant") had previously filed an application with the Town of Chatham Zoning Board of Appeals for approval of a Special Use Permit to utilize certain lands located at 206 Thomas Road Chatham, NY as a Summer Tennis Camp for underprivileged children. The applicant proposed that the +/- 26 acre parcel which was previously used as a horse boarding, training, and riding facility be converted into a summer camp where the former riding rings and two other currently vacant locations on the property be converted into six outdoor tennis courts. The horse stables were to be converted to dormitories and the indoor riding arena converted to two tennis courts. The residence already on the property was to be converted to a partial residence and a partial dormitory/housing for staff and commercial kitchen/dining area; and

WHEREAS, a citizens group known as Thomas Road Conservation Alliance (TRCA) became involved in the process and provided information to the Town at all points of the entire process, including during the early portions of the ZBA application; the drafting of the moratorium [indeed, TRCA counsel suggested the language utilized in the moratorium regarding the variance process]; and the within variance application. It should be noted that Applicant and their counsel were also involved in the drafting and review of the moratorium and the variance process; and

WHEREAS, Thomas Road is an unpaved road within the Town of Chatham and thus the aforementioned pending application for a special use permit before the ZBA was stayed as a result of the said Local Law #1, 2015; and

WHEREAS, the Applicant applied for a variance under the terms and conditions of Section 5. of the said Local Law #1 of 2015 which states:

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship for a legally operating use. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variance from this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall grant a variance of the application of this Local Law to a particular property, then the Town Board shall grant a variance of the application of this Local Law to the

minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

C. Supersession. This variance section and the process and procedure of this Local Law supersede the New York State Town Law §§267, 267-a and 267-b in accordance with the powers granted in and pursuant to the provisions of §10 of the Municipal Home Rule Law and §10 of the Statute of Local Governments. It is the intent of the Town Board pursuant to §10 of the Municipal Home Rule Law, to supersede the provisions of the Town Law set forth above relating to the reviewing body and process and procedure governing the granting of variances; and

WHEREAS, the Town Board referred the application to the Columbia County Planning Board (CCPB) for review pursuant to the NYS General Municipal Law §239 and the CCPB determined that the matter was a local issue without county-wide or intercommunity impacts, thus allowing for simple majority vote on the application; and

WHEREAS, the Town Board determined that the review of the variance application under the New York State Environmental Quality Review Act ("SEQRA") was not required in accordance with 6 NYCRR 617.5 since Type II actions are exempt from SEQRA under the following subparagraphs thereof:

- (30) adoption of a moratorium on land development or construction;
- (27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (31) interpreting an existing code, rule or regulation; and

WHEREAS, the standard for review and determination of the existence of a hardship needed to qualify for a variance is found in §5.A. as follows

“...the owner of said property may apply to the Town Board of the Town in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship for a legally operating use. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.” and,

WHEREAS, additionally, both the Applicant counsel and citizens' group counsel concurred that as further guidance the case of Montgomery Group, LLC v. Town of Montgomery, 4 AD3d 458, (2<sup>nd</sup> Dept., 2004) may be considered, wherein the Court considered whether a hardship was proven and whether the further review of the SUP application would substantially undermine the land use review and revision that was then underway in the Town; and

WHEREAS, the Applicant submitted documentation and testimony in support of his argument that he had and will continue to suffer an unnecessary hardship based upon the cost of the purchase of the property, fees and costs for engineering and other consulting work associated with the Special Use Permit application before the ZBA and the inability to conduct meaningful fundraising during the pendency of the moratorium. This documentation included among other things, tax bills, invoices from Applicant's and Town engineers and attorneys, and many letters and emails from potential donors advising of the desire to donate but who would not do so until the project could proceed. Additionally, the Applicant submitted a copy of the IRS 501-c-3 (charitable organization tax-exempt status) application and approval in support of the within application; and

WHEREAS, the TRCA submitted testimony, documentation and legal argument with respect to the application and to the effect that the Applicant did not and could not prove a hardship necessary to obtain the variance, which included emails, letters, affidavits and legal memoranda; and

WHEREAS, the Town of Chatham is in the process of drafting zoning law revisions in accordance with the Comprehensive Plan enacted by the Town Board. It is expected that a proposed draft of the new zoning law will be presented to the Town Board within the next few months. The current zoning law has limited criteria for review of all special use permits and the revision will create specific criteria for many of those uses, including summer camps.

NOW THEREFORE IT IS HEREBY

FOUND AND DETERMINED, that based upon the definition of an unnecessary hardship found in the moratorium and set forth above and an analysis of the standard of review contained therein that the Applicant has failed to provide evidence of an unnecessary hardship as follows:

1. Applicant submitted evidence of the cost of the purchase of the property and consulting fees to begin the ZBA application for special use permit and opined that same is an unnecessary expense. The Board finds that such costs are not unnecessary since they naturally flow from any real estate purchase which might include a commercial or similar venture.
2. Applicant submitted evidence of carrying costs such as mortgage payments and taxes and cited same as proof of an unnecessary hardship. The Board finds that such costs are the usual and normal incidental costs associated with land ownership and thus are not unnecessary. Additionally, the mere delay of being required to continue to pay such costs during the pendency of the moratorium is not an unnecessary hardship since such costs are due and payable with or without the existence of the moratorium.
3. The Applicant submitted many emails and letters from potential donors who all stated that they stand ready to make donations to the Foundation in support its efforts, but would not do so until Applicant is allowed to proceed. The Board finds that while there may be a current inability to obtain the offered funds from donors, most if not all have stated in their pledges that once all approvals are received from the town, they would indeed make the donation. Thus, the mere delay of receiving the pledges does not create a hardship in accordance with the language of the moratorium law herein.
4. The Applicant submitted a copy of the Foundation's 501-c-3 application for tax exempt status in support of the Application. The budget contained therein reveals that the Applicant has already raised substantial funds and has \$450,000 in cash. This is a clear indication that an unnecessary hardship would not be created by a delay during the moratorium period to obtain the required special use permit.
5. The Board also finds that since the Town is undergoing a revision of its zoning and land use laws which are nearing completion, the granting of a variance will undermine that revision process since currently the Town zoning law contains very limited and general review standards which

are being revised to include specific criteria for special uses to help mitigate the potential impacts upon neighboring properties.

VOTING: On a motion made Bob Balcom, seconded by Maria Lull, and carried 3 to 2, the application for a hardship variance from the Town of Chatham moratorium Local Law #1 of 2015 by Adam Slone/Life Serve Youth Foundation is hereby denied.

**EXECUTIVE SESSION**

On a motion by Councilman Lull, seconded by Councilman Rohde and carried the Town Board entered executive session at 7:30 PM. (Councilman Balcom voted NAY)

Motion was made by Supervisor DeGroot, seconded by Councilman Balcom to leave executive session at 7:45 PM. Motion carried.

**VOTE**

	AYE	NAY	ABSENT/OTHER
Jesse DeGroot	_____	__x__	_____
Henry Swartz	_____	__x__	_____
Maria Lull	__x__	_____	_____
Bob Balcom	__x__	_____	_____
Jean Rhode	__x__	_____	_____

Voting Dated: July 7, 2015

Resolution Approved: July 16, 2015

B. Town comptroller/accountant.

- Attorney Rapplelea prepared the RFP.

**RES. #94-15** to accept the RFP for appointment of Town Comptroller. Councilman Balcom offered RES. 94-15 and moved its adoption to accept the RFP for appointment of Town Comptroller. Councilman Lull seconded the motion.

**DISCUSSION**

- Balcom doesn't want to delay. We should do it as a firm.

- Swartz asked how long should it be posted for.

- DeGroot responded with three weeks.

- Lull asked if the RFP would be sent to firms we already have information from.

- DeGroot stated that it will be advertised in the newspapers. The RFPs will have to be returned by August 7, 2015 at 4PM.

- Lull suggested we remove the salary and let the applicant give the Town a number.

- DeGroot disagrees. He wants the salary left in the RFP.

- Swartz stated that if we don't put the number in the RFP they'll come in too high.

- Lull said that when she canvassed local firms they came in between 15 and 20K. This is not a 25 to 30 hour week position.

- DeGroot doesn't want to skew this towards accounting firms. The comptroller is very valuable. The committee focused on dollars and cents.

- Balcom said that they did not focus on just dollars and cents.

- Lull said to look at the savings. There would be no insurance or new software to purchase.

Paragraph one of the RFP will read as follows:

**Purpose of Request**

The Town of Chatham is requesting proposals for the purpose of appointing a Town Comptroller to submit written proposals to fulfill the duties of that position. Depending on qualifications and experience the position currently is budgeted at up to **\$28,000**.

**VOTE**

AYES: DeGroot, Swartz, Lull, Balcom and Rohde NAYS; None Resolution adopted as amended  
Copy attached.

All proposals must be received on or before 4:00 p.m., August 7, 2015. The Town Board will evaluate the proposals and will select a firm on August 20, 2015..

C. Electronics recycling.

- Super. Rickert said that they discontinued the electronics recycling at the highway garage because they were overwhelmed with items that could not be recycled. They posted signs stating that they couldn't take televisions and people left them anyway. The cost to the Town is well over \$700.00 to dispose of the junk people left which couldn't be recycled. It all started out great but when people realized that this wasn't policed 24/7 they started dumping everything.

\_ Balcom thought maybe we could just offer it quarterly.

- Rickert thought maybe the County will start to offer it at the transfer stations.

- Swartz thought maybe a camera.

- DeGroot said they he is involved at the County on this and he will keep the Board apprised.

D. Climate Smart.

E. Peddlers permit.

- Swartz would like to see a fine for violators.

- DeGroot will talk to CEO Simonsmeier about this. It's meant to protect the Town's residents.

**RESOLUTIONS**

**RES. #95-15** Supervisor DeGroot offered RES. #95-15 and moved its adoption to approve the minutes of the May 21, 2015 regular town board meeting, the June 8, 2015 special town board meeting; the June 18, 2015 regular town board meeting. Councilman Rohde seconded the motion.

**VOTE**

AYES: DeGroot, Swartz, Lull, Balcom, Rohde NAYES: None Resolution adopted

**PUBLIC COMMENT**

- Mr. Wapner asked if the LSYF resolution would be in the minutes. Yes it will. Attorney Rappleyea gave him a copy.

- Attorney Rappleyea spoke about the attorney- client privilege. A document between an attorney and his client is a legal document and therefore can be discussed in executive session. He doesn't want the opposition knowing strengths and/or weaknesses.

- Balcom understands Rappleyea's point but he still has a problem because "potential litigation" is not a topic for executive session.

**MOTION TO CLOSE MEETING**

Motion was made by Councilman Swartz, seconded by Councilman Balcom to adjourn at 8:30. Motion carried.

Respectfully submitted by,

Beth Anne Rippel  
Town Clerk