

REGULAR TOWN BOARD MEETING  
TOWN OF CHATHAM  
488 Route 295, Chatham, NY 12037  
September 17, 2015  
7:00 P.M.

**PRESENT:** Supervisor Jesse DeGroot, Councilman Maria Lull, Councilman Jean Rohde, Town Clerk Beth Anne Rippel, Town Attorney Tal Rappleyea

**ABSENT:** Councilman Bob Balcom, Councilman Swartz

**Others present:** Gary and Linda Wemple, Jim Johnson, Tom Crowell 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. Two letters re: supporting the Crellin Park summer program.

B. David Levy, re: opposition to the lowering of the speed limit on state route 203 from Chatham to Valatie.

C. Charter Communication, re: surcharge increase.

**PUBLIC COMMENT**

-G. Wemple asked if anything has been done about their request for a safety study on the East Chatham Bridge.

-DeGroot said yes. Traffic counts from CC DOT are in. In a letter to B&L from Joe Visconti (NYS DOT) he requested an accident history study, clarification of the site distance problem and a profile of the realignment of Albany Tpk. & State Route 295. We are waiting to hear back.

-Johnson asked that we update the minutes on the website.

-L. Wemple asked whose engineer was used for the bridge.

-DeGroot stated CSX used their own engineers and did the design of the bridge and sidewalk. The Town did not spend any money on this.

-L. Wemple said she read the railroad law and it states that the frame and the abutments shall be maintained by the railroad corporation and the road over the bridge shall be maintained by the municipality. The railroad has not been maintaining their structure. How is taking over the ownership of the bridge in the best interest of the Town?

-DeGroot stated that there is a 35 year warranty on the bridge and the Town will maintain it to ensure that it lasts.

-L. Wemple asked why the Town signed off on the bridge and took on that responsibility.

-DeGroot stated that that was the agreement between the Town and CSX. The Town has to take possession of the Bridge after construction or CSX wouldn't build the bridge at all. The Town at this point has not yet taken ownership of the Bridge.

-L. Wemple said that they don't believe that something would have happened if the Town hadn't agreed to take ownership. It may have taken a while but something would have happened.

-DeGroot said, yes, something would have happened if the Town hadn't agreed to take ownership of the bridge, we wouldn't have a bridge at all.

-Rappleyea stated that the Town of Stuyvesant took the "hard ball approach" with CSX and after four years they still don't have a bridge and the road is still closed.

- DeGroot said that the White Mills Rd. Bridge cost the Town \$150,000, imagine having to

swallow 1.3 million dollars to build the East Chatham Bridge at tax payer's expense.

-L. Wemple is concerned about the future costs associated with maintaining a bridge.

-L. Wemple said that Kleiman-Levine asked for a safety study which is not the same as the traffic count which the Town has.

-DeGroot said that the traffic study is part of the resolution.

## **REPORTS**

A. Highway – report on file

B. Recreation Department

C. Code Enforcement/Zoning Enforcement – report on file

D. Dog Control – report on file

E. Environmental Management Council

F. Justice Court – report on file

G. Assessors

H. Zoning Implementation Committee – Rappleyea reported that they met last night and are working on the punch list, there are 2 more things to work through. They are hoping to complete that work at the October 7<sup>th</sup> meeting and have a draft ready for the Board to review.

I. Supervisor (county business) – DeGroot reported that the County budget looks like it will be under its tax cap, again, close to 0%.

J. Town Comptroller – the new comptroller was hired and is getting used to our system. There's no report this month.

K. Town Clerk this month the focus is on hunting licenses. The new DEC site has made license sales more efficient and much faster than the previous site.

L. Citizen Finance Committee – David Levow said that they will have five years of actual revenue and expenditure figures and budgeted numbers which will be helpful in the budget process. Levow asked if we could develop a five year strategic plan using best and worst case scenarios. Maybe have some sense of where the pitfalls could be.

## **NEW BUSINESS**

A. Budget schedule is as follows; October 5<sup>th</sup> budget presentation, 8th, 15th (prior to the Regular TB Meeting) and 19th at 6 PM. The tentative date of the public hearing is October 29th, 2015 at 6 PM.

## **OLD BUSINESS**

A. Municipal parking lot re: Tom Crowell is asking for permission to use the municipal parking lot for Chatham Brewery October Fest. As per Tom Crowell the event will take place in the parking lot in the Village on October 3<sup>rd</sup> from 3-8 PM. There will be beer, food trucks and entertainment and they anticipate that this will bring people into the Village and Town. Lull asked if the Village police department was going to take responsibility for routing traffic. Crowell said yes. When asked about alcohol outside of Chatham Brewing Crowell said that the Village modified their open container law for this event.

-DeGroot asked Crowell for a certificate of insurance which Crowell said he'd provide in addition to certificates from the food truck vendors.

**RES. #103-15** to allow Chatham Brewing to utilize the municipal parking lot, located in the Village of Chatham and jointly owned by the Village and the Town of Chatham, for an October Fest to be held on October 3, 2015, 3-8 PM. Supervisor DeGroot offered RES. #103-15 and moved its adoption to allow Chatham Brewing to utilize the municipal parking lot, located in the Village of Chatham and jointly owned by the Village and the Town of Chatham, for an October Fest to be held on October 3, 2015, 3-8 PM. Councilman Lull seconded the motion.

VOTE

AYE: DeGroot, Rohde and Lull    NAY: None                      Resolution adopted

B. Broadband update. We had information from Charter Communications if their acquisition of Timewarner gets FCC approval which is more likely than not it would “bode very well for us”. Charters CEO is hoping for approval by the end of this year although they expect it will carry over into 2016. The acquisition would mean that Charter will work off existing Timewarner infrastructure based out of Pittsfield. We would receive all services now offered by Timewarner. They will invest about 10 million dollars in this area.

-DeGroot stated that in a press release ASA Networks announced the rollout of Super-Fi, 6 Mbps speed, available now in Chatham and Copake. Wireless Internet Access Service uses TV white space spectrum and Wi-Fi to extend into areas where broadband was limited or unavailable. Their initial efforts in the area have been successful. To see if you can receive ASA Networks internet go to [asanetworks.com](http://asanetworks.com).

-DeGroot said he’s waiting to see the County plan for broadband. Lull stated that competition is good.

C. Noise enforcement/Developer’s Agreement.

-Rapplelea said that the PBA and ZBA have approved the PS21 project. A Developer’s Agreement already exists but for this case there’s a change to schedule F, sound enforcement protocol. What that is is an agreement between the Town and PS21 because the PBA and ZBA don’t have contracting powers and that agreement is that there will always be a point of contact at PS21 (name and number will be made public) who can act on a noise complaint. One of the neighbors main complaints was that there was no one to call if they had a problem. This person would be from PS21. They would take the complaint from the person and if there is an issue the sound would get turned down. In the sound system there will be a limiter which prohibits the sound from going over a certain decibel. The contact person would do a sound measurement outside the building at ten feet. If there is a violation they will then report the complaint and the test results to the Town’s CEO Walt Simonsmeier. Lastly if this doesn’t work and either the neighbors or the Town are not happy with this then we have to go back to the drawing board. With this in place the Town doesn’t have to have someone on call 24/7 to take complaints or have to contract with local law enforcement to respond for noise issues. PS 21 has agreed to this protocol.

DeGroot made a motion to accept the Developers Agreement and authorize the Supervisor to sign it, Rohde seconded the motion.

DISCUSSION

-Lull said that the agreement is between the Town, PS21/Questaterra. She is concerned about the neighbors; she hasn’t seen the agreement and neither have the neighbors. Lull wants the Developers Agreement posted on the website so she and everyone else can read it. Rapplelea said that the agreement was finalized yesterday (only change was schedule F) and the neighbors haven’t seen it. She can’t vote on it. The neighbors have to agree. It has to be posted.

-Motion was made by DeGroot, seconded by Rohde to table until October, motion withdrawn.

- Rapplelea said that in July we looked at the Peddler’s Permit Law and referred it to Walt for his review. CEO, Walt Simonsmeier reviewed the Law and he’s OK with it. The Board will need to schedule a Public Hearing.

**RESOLUTIONS**

**RES. #104-15** to accept the minutes of the August 20, 2015, regular town board meeting, and

the special town board meetings of August 18, 2015; August 25, 2015; and September 3, 2015. DeGrootd offered RES. #104-15 and moved its adoption to accept the minutes of the August 20, 2015, regular town board meeting, and the special town board meetings of August 18, 2015; August 25, 2015; and September 3, 2015. Councilman Rohde seconded the motion.

### Discussion

-Lull said that she just got the minutes at 5:15 or so and hasn't had a chance to look at them yet. We can't get material at the last minute. She would like to have a day or so to read it. We all work and we have to find time to fit it all in. Clerk stated that for the most part minutes are timely.

**RES. #105-15** to remove (One) 7-Ton HE Ha Trailer (#76) from Highway Inventory and to confirm the purchase of a (One) 7-Ton Trailer with CHIPS funding for the sum of \$5,780.00 from J&M Auto Repair, Nassau, NY. Supervisor DeGrootd offered RES. #105-15 and moved its adoption to remove (One) 7-Ton HE Ha Trailer (#76) from Highway Inventory and to confirm the purchase of a (One) 7-Ton Trailer with CHIPS funding for the sum of \$5,780.00 from J&M Auto Repair, Nassau, NY. Councilman Lull seconded the motion.

VOTE

AYE: DeGrootd, Lull, Rohde      NAY: None      Resolution adopted

-Lull asked to go back to the resolution on approving minutes. She did not want to vote on the August 20, 2015 meeting minutes by would vote on the others.

**RES. #104-15** to accept the minutes of the special town board meetings of August 18, 2015; August 25, 2015; and September 3, 2015. DeGrootd offered RES. #104-15 and moved its adoption to accept the minutes of the special town board meetings of August 18, 2015; August 25, 2015; and September 3, 2015. Councilman Rohde seconded the motion.

VOTE

AYE: DeGrootd, Lull, Rohde      NAY: None      Resolution adopted

**RES. #106-15** to authorize the town court to submit a JCAP grant application and authorize the Town Supervisor to sign the application. Supervisor DeGrootd offered RES. #106-15 and moved its adoption to authorize the town court to submit a JCAP grant application for the maximum amount of \$30,000.00 and authorize the Town Supervisor to sign the grant application.

VOTE

AYE: DeGrootd, Lull, Rohde      NAY: None      Resolution adopted

**RES. 107-15** to authorize renewal of county snow and ice contract. Supervisor DeGrootd offered RES. #107-15 and moved its adoption.

MADE this day of September 17, 2015 by and between the COUNTY OF COLUMBIA, New York, hereinafter referred to as "County" party of the first part, and the TOWN OF CHATHAM, New York, hereinafter referred to as "Town", party of the second part,

WITNESSETH

WHEREAS, Section 135-a of the Highway Law provides that a County may contract with any Town for the removal of snow from County Roads or for sanding or otherwise treating them for the purpose of removing the danger of snow and ice; and

WHEREAS, the County and the Town desire to enter into a Contract for the above stated intent and purpose upon the terms, conditions and considerations set forth below,

NOW, THEREFORE, IT IS MUTUALLY AGREED between the parties as follows:

1. When used in this Contract, unless the context or subject matter otherwise requires the term:

a. "Annual County cost of Labor" shall mean the gross amount of regular salaries and wages paid by the Town to its officers and employees for work performed pursuant to this contract and performed between an October 1st and May 1st period under this Contract when such work is performed on County roads.

b. "Annual cost of machinery, tools or equipment" shall mean the total amount arrived at after adding together the results of multiplying each separate hourly rate established respectively for machinery, tools or equipment in the "New York State Department of Transportation Equipment Rental Rate Schedule" which is in effect at the time such machinery, tools or equipment is used between any October 1st and May 1st period under this Contract by the Town for the County roads in performance of this Contract times each hour or any fraction thereof such machinery, tools or equipment is respectively so used.

c. "County roads" shall mean one or more county roads on the County of Columbia road systems, or any part thereof, including any bridge and bridge sidewalk. The County roads which are required to be serviced by the Town pursuant to this Contract are identified in Appendix "A" of this Contract.

d. "County Superintendent" shall mean the Administrator to the Department of Public Works.

e. "Fringe Benefit" shall mean any of the following; a New York State Retirement System plan under the New York State Retirement and Social Security Law. Social Security (FICA), medical insurance, workers' compensation insurance under the County Mutual Self-Insurance Plan, unemployment insurance, disability insurance, vacation days, personal leave days, sick days.

f. "Fringe Benefit Rate" shall mean that percentage rate arrived at by adding together each applicable fringe benefit percentage rate for each fringe benefit.

g. "Ice Control Material" shall mean sand, salt and other materials used to apply to ice.

2. The Town agrees to remove the snow from County roads and to apply thereon sand and salt, or other ice control material, for the purpose of removing the danger of ice and snow. The foregoing work shall be performed during the period of October 1st to May 1st of each and every year that this Contract is in effect.

3. The Town agrees to record and maintain, in writing, for the periods set forth in paragraph two of this Contract: the daily amount of time Town labor is used in the performance of this Contract, the daily amount of time Town labor is used in removing snow from and applying salt and sand or other ice control material to County roads; the daily amount of time Town machinery, tools and equipment is used in the performance of this Contract; the daily estimated tonnage of sand, salt and other ice control materials applied on County roads in the performance of this Contract. In addition, the Town agrees to submit the foregoing data to the County on a form to be provided by the County, the submission dates to be the first and fifteenth of each and every month that such data can be supplied (APPENDIX B).

4. The Town shall retain all records maintained in relation to this Contract for at least three (3) years from the date of termination of this Contract and shall submit such records to the County, at its request, in order for the County to audit same in connection with any aspects of this Contract.

5. The Town agrees to perform all work under this Contract in a professional and workmanlike manner.

6. The Town agrees to immediately notify the Columbia County Department of Public Works in the event that the work under this Contract cannot be performed due to illness or injury of personnel, broken or malfunctioning machinery, tools or equipment and to immediately contact the Columbia County Department of Public Works for assistance. In any event, the County shall have the right to perform such work until such time as the County Superintendent determines that the Town is able to again perform such work.

7. The County agrees to reimburse the Town monthly during the life of this contract for (a) The cost of labor, (b) overtime cost of labor, (c) the fringe benefit rate, (d) cost of materials (sand & salt), (e) cost of equipment use.

8. As further consideration herein, the County agrees to grant to the Town a permanent easement over lands owned by the County located in the Town of Chatham on State Route 295 for the purpose of access to and egress from the Town's sand/gravel mine. The Town shall be responsible the design, construction, maintenance and security of the access road, for obtaining the curb-cut permit from the NYSDOT associated therewith and any other costs and/or actions necessary to complete the access road project. The exact location of the said access road is depicted in the attached APPENDIX C. The Town shall hold harmless, defend and indemnify the County for any and all claims arising from the use or existence of the within access road.

9. Upon the execution of this Contract as provided in paragraph 10, this Contract shall take effect on or be retroactive in effect to the date of this Contract first above written and shall remain in effect until May 1, \_\_\_\_\_, unless terminated between May 1st and August 1st of any calendar year by resolution of either the Town Board or the County Board of Supervisors, as the case may be.

10. This Contract is subject to approval by resolution of the Town Board and the County Board of Supervisors. A certified copy of the Town's resolution shall be filed with the Clerk of the Board of Supervisors and a certified copy of the County Board's resolution shall be filed with the Town Clerk.

11. This Contract may not be changed or modified except upon the mutual written approval of the Town Board and the County Board of Supervisors.

12. The following four (4) procedures to implement and carry out the provisions and intent of this Contract are hereby established:

In general, County roads are to be given a higher priority than Town roads.

Intersections shall be kept clear of snow and banks cut to allow sufficient sight distance. Also, sanding of the intersections shall be done to allow proper stopping.

During heavy snowstorms, a County road shall be kept open and any major wing operations are to be done after the storm.

All County roads shall be winged back to the ditch line.

Any amendment of the forgoing procedures or the establishment of additional

Procedures are authorized by mutual agreement of the County Superintendent and the Town Superintendent.

13. To the fullest extent permitted by law, the Town shall indemnify and hold harmless the County of Columbia, its officers, employees, servants and agents against the risk of loss, damage or liability caused by personal injuries, wrongful death and arising out of, or in connection with, the Town's performance of the Contact.

It is understood that the Town is not required, obligated, authorized or permitted to Design or construct County roads under this Contract.

15. The Town shall procure and maintain during the life of this Contract, the types of insurance and limits of liability for such types as shown on the attached Certificate of Insurance form marked Appendix C until January 1, \_\_\_\_\_, and effective on such date and thereafter as shown on the attached Certificate of Insurance marked Appendix D. An executed Certificate of Insurance in the same form as shown on Appendix C shall be furnished to the County no later than September 1, \_\_\_\_\_ and an executed Certificate of Insurance in the same form as shown on Appendix D shall be furnished to the County no later than the renewal date.

IN WITNESS WHEREOF, the County has caused this Contract has to be executed by the Chairman of its Board of Supervisors and the Town has caused this Contract to be executed by its Supervisor, the execution by the foregoing Chairman being pursuant to resolution of the County Board of Supervisors and the execution by the Supervisor being pursuant to a resolution of the Town Board.

COUNTY OF COLUMBIA, NEW YORK

By: \_\_\_\_\_

, Chairman

Board of Supervisors

TOWN OF CHATHAM, NEW YORK

By: \_\_\_\_\_

Supervisor

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Notary Public

County of Columbia

Councilman Rodhe seconded the motion.

VOTE

AYE: DeGrootd, Rohde and Lull    NAY: None                      Resolution adopted

**RES. #108-15** to urge DOT action on the East Chatham Bridge. Supervisor DeGrootd offered RES. #108-15 and moved its adoption.

WHEREAS, several years ago the Town of Chatham was notified by the Department of Transportation that the bridge carrying Albany Turnpike over the CSX railroad tracks in the Hamlet of East Chatham was failing and must be replaced, and

WHEREAS, CXS agreed to rebuild said bridge at its own cost upon the condition that the Town of Chatham ultimately accept ownership upon approval and completion of such construction, and

WHEREAS, the Town of Chatham had no authority or substantive input with respect to the engineering, design and construction of said bridge which was all carried out at the direction and control of CSX, and

WHEREAS, during the engineering and design phase of the project notwithstanding the Town's request to the contrary CSX built a single lane bridge, informing the town that this design was the only design which CSX would construct or in the alternative no bridge would be constructed, and

WHEREAS, following the completion of construction and opening of the bridge, the design and traffic pattern has resulted in a multitude of complaints from citizens and town officials regarding the safety of said bridge and traffic pattern, and

WHEREAS, the Town has submitted design plans to modify the intersection of Albany Turnpike and Route 295 including changes to the approach to said bridge and the intersection of Frisbee Street directly across from said intersections of Route 295 and Albany Turnpike to Department of Transportation for approval on June 2, 2015, and

WHEREAS, the New York State Department of Transportation provided comments to such design and plan by letter dated August 26, 2015, and

WHEREAS, engineers for the Town of Chatham shall complete their response to such comments immediately,

NOW THEREFORE IS HEREBY RESOLVED the Town Board hereby requests that the Department of Transportation promptly respond to such comments made by the town engineer immediately upon receipt thereof in order to efficiently and expeditiously completes the project. Councilman Rohde seconded the motion.

## **DISCUSSION**

-Lull stated that the resolution came about because Adelle Kleiman-Levine and the Wemples

came and petitioned the Board to do something about the East Chatham Bridge. It's unsafe and citizens have a right to complain. They were prepared to submit their petitions. Do we have those petitions?

-DeGroot said that at the last meeting Kleiman-Levine was informed that the Town would have a resolution ready for tonight.

-Lull said that because this came from the citizens the resolution does not say that and it should. That's where the intent was. Back in March we met at the East Chatham Fire House. In the resolution it says that the engineers didn't submit design plans to DOT until June 2, 2015. What happened in between March and June 2?

-DeGroot said they did make big design changes which probably took time.

-Lull said at the March meeting we had all the reports and designs from B&L.

-DeGroot said that we can invite B&L to our next meeting to answer those questions.

-Lull said that would be a good idea and maybe Adelle and the Wemples can attend. The petitions should accompany the resolution. Lull wants the resolution revised. Lull said that she assumed Tal developed the resolution to which he responded yes. Lull stated that a time-line is necessary. In paragraph 2-4 we seem to be saying that we're "absolving" ourselves from any responsibility for this Bridge". We did have some responsibility. Lull's question is did we advocate for more than what we have now? Lull wishes she knew more back then and she would have addressed CSX differently. She would have advocated for a "better product".

- DeGroot asked Lull if she knew then what she knows now what would she advocate for.

-Lull said she would have negotiated harder with CSX.

- DeGroot said that she sat through all the meetings as did everyone on the Board and they all heard the same thing.

-Lull said that was right and she voted for it. But she was not in the position at the time to negotiate harder with CSX.

-DeGroot disagreed. Lull was in the position at that time because she sat on the board and they all heard the same words from CSX. There was nothing different for anyone.

-Lull said we can't go backwards. We need to rectify the traffic problems, possibly with a traffic light. Lull wants another resolution which will include the petitions from the "Levine Group".

-DeGroot said that it's easy to sit here now and do things differently. He's not sure what we could have done differently. He would like Lull to tell him what that would be. The whole Board sat there and heard the options from CSX, "take the bridge or you don't have a bridge".

DeGroot asked what could have been done better.

-Lull said that we're not the only town affected by this kind of thing. We only know about Stuyvesant, where are the other places throughout the US who have had a similar problem?

-Tal didn't know.

-Lull said that we can't point the finger at each other. But the resolution says that we are absolving ourselves from any fault.

-Tal will be happy to make any changes the Board wants him to make.

-Lull wants to address what the Levine group wants.

-Tal will call Lull next week to discuss this.

-DeGroot reminded the Board that the 5 members sat here and listened to what CSX had to say and accepted the bridge agreement. Now to say you would have done it differently is great but you can't say that - there's just no way to do it. Tom had said that there are probably going to be consequences we're not aware of yet.

-Lull is saying that CSX has done this to other towns. We should have been aware of what they had experienced and how they dealt with it.

- Rohde said it's done and we need to move forward.
- DeGroot has been in contact with all the State and Federal officials and they are all aware of our situation. They're investigating possible funding for a light. We can deal with this at budget time and find money from another line to pay for this. We'll all look work on that together.
- Lull said that this is a priority for the Town and we have to do something.
- DeGroot said yes, we are all aware of the priority.

#### **PUBLIC COMMENT**

- G. Wemple said the resolution was not what they asked for. He asked the Clerk if she had the minutes, she said she didn't. He said that the minutes should show that Adelle asked for a resolution for DOT to complete a safety study on the EC Bridge. He believes the Board passed a resolution to do so. The petitions are in different areas and they will present them at the next Board meeting. He would like to have the engineers come to the next meeting.
- L. Wemple according to railroad law CSX was responsible for maintaining the bridge. Why was it allowed to fall into such disrepair?
- DeGroot suggested that she contact Highway Super Rickert and for the particulars on that.
- L. Wemple said that if it had been taken care of all along we wouldn't have needed a new bridge.
- D. Levow wanted all documents the Board was discussing posted on the website.

**RES. #109-15** to post on the Town's website documents to be discussed at a Town Board meeting the Friday prior to the town board meeting when practicable. Supervisor DeGroot offered RES. #109-15 and moved its adoption to post on the Town's website documents to be discussed at a Town Board meeting the Friday prior to the town board meeting when practicable. Councilman Lull seconded the motion..

#### **MOTION TO CLOSE MEETING IN MEMORY OF TONY OOMS**

Motion made by Councilman Rohde and seconded by Councilman Lull to adjourn at 7:55 PM.  
Motion carried.

Respectfully submitted by,

Beth Anne Rippel, Town Clerk