

PERINTON TOWN BOARD MEETING  
1350 Turk Hill Road, Fairport, NY 14450  
Wednesday, May 27, 2009

|          |                   |               |
|----------|-------------------|---------------|
| PRESENT: | James E. Smith    | Supervisor    |
|          | Patricia S. Knapp | Councilperson |
|          | Carolyn H. Saum   | Councilperson |
|          | Joseph H. LaFay   | Councilperson |
|          | Peg S. Havens     | Councilperson |

ALSO PRESENT: Robert Place, Esq., Town Attorney; Thomas C. Beck, Commissioner of Public Works; James A. Donahue, Commissioner of Recreation and Parks; Jennifer A. West, Town Clerk; Michael Doser, Director of Code Enforcement/Development; John Beck, Deputy Director of Code Enforcement/Development; T.C. Lewis, Planning Board; Chris Fredette, Conservation Board.

Supervisor Smith called the meeting to order at 8:00 pm and introduced the Board and staff present.

Supervisor Smith opened the meeting with a moment of silence for Paul Bogart. Paul passed away this week. Paul served on the Town's Conservation Board since 1988 and there was a service today at the Methodist Church. Chris Fredette of the Conservation Board did an excellent job of portraying Paul's significant contributions to the Town and the Conservation Board.

Councilperson Knapp made a motion, seconded by Councilperson Havens, that the minutes of the Town Board meeting of April 8, 2009 be approved as submitted by the Town Clerk.

Ayes: Knapp, Saum, LaFay, Havens  
Nays: None  
Abstain: Smith

Supervisor Smith thanked Deputy Supervisor Knapp for conducting the Town Board meeting of May 13, 2009 in his absence.

PUBLIC HEARING  
LIMITED DEVELOPMENT DISTRICT  
SPECIAL USE PERMIT  
666 WHITNEY ROAD

Supervisor Smith opened the Public Hearing and asked the Clerk for proof of publication and affidavit of posting. Proof of publication was given in the Fairport East Rochester Post on May 6, 2009; affidavit of posting was also May 6, 2009.

John Stapleton of Marathon Engineering began his presentation regarding the Special Use Permit by introducing Jim Taylor, President of R.J. Taylor and Move East LLC which is the sponsor of the 666 Whitney Road project. The project is located on the north side of Whitney Road, east of the O'Connor Road intersection. It is made up of two parcels, one is approximately 3.3 acres in size and currently has the vacant Rochester Telephone building and adjacent parking on it within a fenced in area. The remaining parcel is about 14.7 acres making the overall project 18 acres. Both parcels are zoned Industrial and Mr. Stapleton appeared before the Town Board to request a Special Use Permit in order to disturb an area of Town of Perinton Limited Development District (LLD). The proposal is to rehabilitate the existing building by placing a new façade on the exterior and moving the parking from the front to the side behind the front setback. The existing building is approximately 28,000 square feet. Three new buildings would be added, bringing the total project area to about 103,000 square feet. Mr. Stapleton is proposing that this project be for industrial and office support space which he

believes to be a permitted use within the Town's zoning code and are therefore not requesting any variances as he believes that they will meet all items and area requirements of the zoning code. Move East LLC plans to place buffers adjacent to lands that are residential or presently used as residential.

The topography of the site starts at Whitney Road and drops as the land goes north and falls down toward the wetland areas or Town of Perinton LDD. Mr. Stapleton pointed to a map illustrating the topography and showed that the wetlands or drainage areas continue to the east and the storm water flows in an east to west direction through the site at 666 Whitney Road. There are about 3.4 acres of wetland on the site and Marathon Engineering has been working with the Conservation Board providing them with additional information to come up with a wetland mitigation plan that they and the Town of Perinton would be happy with. Marathon Engineering looked at options for this project. The first was to not disturb the wetland in any way, shape or form. They found, however, that they wanted to be able to take advantage of the areas between the wetlands and that it would not be economically feasible to develop the project in that manner. The second option was to minimize the disturbance and do some off-site mitigation for the wetlands. Mr. Stapleton stated that they believe that they have come up with a way to enhance the existing wetlands rather than going off-site. They believe that enhancing the on-site wetlands will have a better rate of success than trying to create a man-made facility somewhere else. Mr. Stapleton then pointed out the disturbance on the map as the three gray areas which are a total of less than .3 acres. The three wetlands were named by a wetland biologist and are referred to as "wetland A South", "wetland A North" and "wetland B". The project calls for crossing wetland A south in order to get to the useable high land. One of the buildings and the storm water management facility would be placed on that land. Wetland B is a small pocket wetland and presently accepts drainage from the existing building and the parking lot and acts as pretreatment before it drains to the larger wetland. The two wetlands that cross the site convey drainage from about 800 feet east of Lonesome Road which is the next road to the east. Storm water travels in an east to west direction and eventually flows to Thomas Creek on to Irondequoit Creek and then on to Lake Ontario. The "fingers" pointed out on the map are critical in treating the water, both storm water quality and quantity before it gets into the larger creeks. Mr. Stapleton then pointed to another map and the areas planned for wetland creation. The areas are low and it is planned to excavate out an area at the same elevation as the existing wetland, keep any mature trees that are there and allow natural vegetation to take over. Move East is proposing .62 acres of newly created wetland, which is a two-to-one ratio from what will be disturbed. Mr. Stapleton pointed out that they have had good success with this type of wetland creation. It keeps the hydraulic characteristics of the wetland intact and allows the natural vegetation to take over.

Mr. Stapleton then enumerated his prospective benefits to the Town and to the project. The first is to increase the overall wetland on the site by about .3 acres. There would also be no change to the upland wetland or the utility corridor on the site. The existing wetlands which remain can also remain as a wildlife corridor through the site for both vegetation and wildlife migrating in an east to west direction. The storm water management facility placed on the site is not counted in the wetland mitigation and will be open water acting as pre-treatment prior to water being released into the larger wetlands. Mr. Stapleton mentioned the field walk of the site which was attended by members of the Conservation, Planning and Town Boards. Wetland A North is a stand of hardwood trees which provides a buffer to the townhouses to the north and northwest. The current plan is to leave the vegetation as it is and to leave the buffer adjacent to the townhouse rear yards as it is.

Mr. Stapleton concluded by stating the benefits to developing a pre-developed site. They believe that this will improve the Whitney Road streetscape. The industrial and office support space will create employment within the Town. The sponsor, Move East LLC, is remediating some contamination that is on the site.

Supervisor Smith closed the Public Hearing and asked for a motion referring this Special Use Permit to both the Planning and Conservation Boards for their feedback.

A motion was made by Councilperson Saum, seconded by Councilperson LaFay, that this Special Use Permit for disturbance to a Limited Development District at 666 Whitney Road be referred to the Planning and Conservation Boards for their comment.

Ayes: Smith, Knapp, Saum, LaFay, Havens  
Nays: None  
Unanimously approved.

PUBLIC HEARING  
AMENDMENT TO SECTION 208 OF THE TOWN OF PERINTON  
FENCE CODE

Supervisor Smith opened the Public Hearing and asked the Clerk for proof of publication and affidavit of posting. Proof of publication was given in the Fairport East Rochester Post on May 13, 2009; affidavit of posting was April 30, 2009.

Code Enforcement Officer, John Beck, reported that over the past few months there has been a steady increase of complaints and concerns from residents about their neighbors installing a fence that is either an eyesore because of its height or the fence has been installed improperly.

The Code Enforcement and Development office receives on average 4-5 calls per week on the town fence code. After a review of the existing code in relation to the concerns raised, it was determined that the code should address the height of a fence in the side or rear yard. The proposed new Sections 208-8, 208-14 and 208-24 are as follows:

*Deleted Text*

*Added Text*

**§ Section 208-8. Definitions**

***FENCE --- A structure serving as an enclosure or barrier usually constructed of, but not limited to: wood, vinyl, masonry, stone, wire, metal or other manufactured material or a combination of material erected for the enclosure/separation of yard areas.***

***HEDGE --- A row of closely planted shrubs, or low growing trees forming a fence or boundary.***

***WALL --- An upright freestanding solid enclosure/barrier usually constructed of masonry, wood, plaster, or other building material serving to enclose, divide, or protect an area. (excluding retaining walls)***

**§ Section 208-14. Application of regulations**

C. Fences, walls and hedges.

- (1) The face side of any fence erected in any district shall face the nearest abutting property, and all posts or supports shall be on the inside of said fence unless said posts or supports constitute an integral part of said face side. *There are no restrictions on the height or style of hedges, walls or fences erected on that part of a lot to the rear of the front setback line. A hedge, wail or fence may be erected on that part of a lot in front of the front setback line, provided that it is not over three feet high except as modified for corner lots. Where land is used and occupied as a farm, such open-style fences as shall be necessary to restrain livestock shall be permitted as needed.*
- (2) ***No fence, wall or hedge more than 3 feet in height shall be erected in front of the front setback line as defined herein.***

- (3) *No fence or wall more than 6 feet in height shall be erected in the side or rear yard.*
- (4) *A building permit must be issued for the installation of any fence and/or wall.*
- (5) *Any fence erected in a Commercial, Restricted Business, Industrial or Limited Commercial District shall be subject to Planning Board approval.*
- (6) *The provisions of the fence code do not apply to any fence for any inground or above ground pool (see § 208-24) or evergreen or solid fence screen for a recreational vehicle (see Chapter 201)*
- (7) *Where land is used and occupied as a farm, such open-style fences as shall be necessary to restrain livestock shall be permitted as needed.*
- (8) *On corner lots in any district, no fence, wall or other structure or hedges or other planting or vehicles, machinery or equipment more than three feet above the level of the adjoining street shall be erected, placed, maintained or parked within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said street right-of-way lines in accordance with the following schedule: [Amended 9-23-1998 by L.L. No. 2-1998]*

| <b>Intersecting Streets*</b> | <b>Equilateral legs<br/>of triangular area<br/>(feet)</b> |
|------------------------------|---|
| Arterial / arterial          | 75  |
| Arterial / collector         | 50  |
| Arterial / any other type    | 50  |
| Collector / collector        | 50  |
| Collector / minor            | 25  |
| Collector / rural road       | 25  |
| Collector / dead end         | 25  |
| Rural road / rural road      | 25  |
| Rural road/ minor            | 25  |
| Rural road / dead end        | 25  |
| Minor / minor                | 15  |
| Minor / dead end             | 15  |

\* Note: These are defined in Chapter 182, Subdivision of Land, § 182-10.

- (9) *On Corner lots, the setback from the lot line abutting on each street shall be the front setback required on that street or highway.*
- (10) *Preexisting conditions that complied with the code in existence at the time of their installation may continue to exist, provided that they: [Added 9-23-1998 by L.L. No. 2-1998]*
  - (a) *Do not represent a public safety concern as determined by the Commissioner of Public Works; or*
  - (b) *Are not allowed to grow to impede the line of sight, and a clear line of vision is maintained below seven feet within the area defined in § 208- 14C (8) above. Determination of such impediment shall be made by the Commissioner of Public Works.*

**§ 208-24 Private swimming pools and other structural recreational facilities.  
[Amended 10-13-1977 by L.L. No. 7-1977; 1-23-2002 by L.L. No. 1-2002]**

A. Private swimming pools will be permitted in all residential districts, provided that there is an existing residence on said lot and the following regulations are complied with:

- (1) Fences. Outdoor swimming pools and filtering equipment located within three feet of the edge of a pool shall be entirely enclosed by an impassable fence extending from the ground to a height of not less than four feet *nor more than six feet* above the ground level. Such fence or enclosure shall be in compliance with the requirements of the New York State Uniform Fire Prevention and Building Code.

Chris Fredette, Conservation Board, asked how these code changes would apply to decorative fences. Mr. Beck said that these are addressed in the current code and the height restriction would be addressed in the new code. The current code also deals with corner lots and obstructions at intersections. Supervisor Smith then asked if permits would be required for these decorative lengths of partial fences. Mr. Beck said that at least an inquiry to the Code office should be made before construction begins. Supervisor Smith stated that some additional conversation should take place before the new code is adopted regarding the exact length and possible exemptions for the permit requirements.

There being no additional questions, and all those wishing to be heard having been heard, the Public Hearing was closed. Supervisor Smith stated that under State law changes to the Zoning Code require referral to the Planning Board and input from them prior to Town Board adoption.

A motion was made by Councilperson Havens, seconded by Councilperson Saum, that the Amendments to Section 208 of the Town of Perinton Town Code be referred to the Planning Board for their comment.

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

Supervisor Smith stated that, due to the Planning Board schedule, this referral would come back to the Town Board at the second Town Board meeting in June at the earliest.

#### END PERMISSIVE REFERENDUM

Supervisor Smith announced that the time of Permissive Referendum for the proposed use of Capital Reserve funds to purchase the development rights to the Chase Farm has passed.

#### APPROVE CONTRACT TROWBRIDGE AND WOLF EGYPT PARK IMPROVEMENTS

Commissioner of Recreation and Parks Donahue referred the Town Board to a letter dated May 20, 2009 in which he explained that the Town of Perinton has a twenty-five year lease with the Humane Society for continued use of Egypt Park. As a part of this extended lease renewal, the Town has agreed to make some park improvements in the next six years. The specific improvements include widening the parking lot, upgrading the play equipment area, replacing the picnic shelter and support pad and installing a new dog park.

Commissioner Donahue is seeking Board approval for a proposal from Trowbridge and Wolf for a scope of work for site design and construction documents for

the Egypt Park improvements. This contract will not exceed \$16,000 and the money will be allocated from the Special Recreation fund.

A motion was made by Councilperson Knapp, seconded by Councilperson LaFay, to approve the signature of the contract with Trowbridge and Wolf for improvements to Egypt Park.

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

RESOLUTION TO SUPPORT SENATE BILL S.4080-A  
AND ASSEMBLY BILL A.7504-A

Supervisor Smith explained that Senate Bill S.4080-A and Assembly Bill A.7504-A are bills regarding a matter that has been before municipalities for about eight years. If someone is injured on the job, they have the ability to “double-dip” as public employees and be paid under disability through the pension system and then there can be a civil suit against the municipality itself and be paid through that process as well. In the private sector, that avenue is not available and the individual would be paid one way or the other, not twice. There is currently a bill in front of the New York State legislature removing that ability and making it easier for settlements to be reached in these types of matters. This resolution would memorialize the fact that the Town Board of the Town of Perinton supports this legislation.

The following resolution was offered for adoption by Councilperson LaFay, which resolution was seconded by Councilperson Saum:

RESOLUTION TO SUPPORT BILL S.4080-A BY SENATOR SCHNEIDERMAN  
AND A. 7504 BY ASSEMBLYMAN WEINSTEIN

WHEREAS, under current state law, public employees hurt on the job are paid twice, both time out of the taxpayers pocket of the same lost future earnings; and

WHEREAS, there is a bill proposed by the NYS Trial Lawyers Association that has notw been introduced in the Legislature (S.4080-A by Senator Schneiderman/A.7504-A by M. of A. Weinstein) which, in addition to ending the unfair double recoveries against public employers, it removes an impediment to the settlement of tort actions; and

WHEREAS, the bill would protect all parties in the lawsuit (including public employer defendants) who settle the case from then being subjected to a claim by a health benefit provider or other collateral source payor for reimbursement of monies paid to the plaintiff—unless there is a statutory right to such reimbursement, thereby encouraging steelemnts;

NOW, THEREFORE, BE IT RESOLVED, that the Perinton Town Board supports these bills and urges our lawmakers to vote these into law; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Peter J. Kiernan, Counsel to the Governor; New York State Senate Majority Leader Malcolm A. Smith; New York State Assembly Speaker Sheldon Silver; Senator James Alesi; Assemblyman David Koon; and Barry P. Schwartz Senior Counsel New York City Law Department.

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

AUTHORIZE DEPOSIT TO CAPITAL RESERVE ACCOUNT FOR PARKS  
EQUIPMENT FUND

Commissioner of Recreation and Parks Donahue reviewed that a few months ago the Town Board had approved the Parks Department sending a few pieces of equipment to auction. The Town has received \$5,310 for that equipment and Commissioner Donahue would like permission to accept that money and deposit it into the Parks Equipment Fund.

A motion was made by Councilperson Knapp, seconded by Councilperson Saum, to transfer the funds received into the Parks Equipment Fund.

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

APPOINTMENT OF LIFEGUARD LIEUTENANTS

Supervisor Smith referred the Board to a letter from Human Resources Director Spacher, which requests appointment under civil service to Lifeguard Lieutenant for two of the Town of Perinton Aquatics staff members, Laura Silins and Matthew Steffen. There will be no change to head count or salary.

A motion was made by Councilperson Saum, seconded by Councilperson Knapp, to appoint Laura Silins and Matthew Steffen as Lifeguard Lieutenants.

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

APPROVE SALARY ADJUSTMENT  
TOWN ENGINEER

Commissioner of Public Works Beck stated that Town Engineer, Tim Oakes has been the interim Director of Code Enforcement and Development. Tim's tenure as interim Director ended with the first day of the new Director of Code Enforcement and Development, Mike Doser's tenure, which was May 18, 2009. During the interim time, Tim's salary was adjusted for the additional responsibilities and should now be adjusted to his Town Engineer salary.

A motion was made by Councilperson Knapp, seconded by Councilperson Saum to approve the salary adjustment for Town Engineer, Tim Oakes to [].

Ayes: Smith, Knapp, Saum, LaFay, Havens

Nays: None

Unanimously approved

APPOINTMENT OF SUMMER SEASONAL EMPLOYEE  
CODE ENFORCEMENT AND DEVELOPMENT OFFICE

Commissioner of Public Works Beck explained that typically a seasonal summer employee has been hired to work in the Code Enforcement and Development office helping out with minor inspections and some of the clerical and computer work of the office. This year the Town is actually down one employee in the Code Enforcement and Development Office. Without that additional Assistant Building Inspector it is even more important to fill the summer seasonal intern position. Commissioner Beck has interviewed several candidates and is recommending the appointment of Caitlin Ellis to the position. Caitlin is a Perinton resident and has recently completed her first year in Virginia Tech's Architectural program. Caitlin would begin with the Town on May 28, 2009.

A motion was made by Councilperson Havens, seconded by Councilperson Saum, to appoint Caitlin Ellis as Summer Seasonal employee in the Code Enforcement and Development office at an hourly rate of \$7.50 beginning May 28, 2009.

Ayes: Smith, Knapp, Saum, LaFay, Havens  
Nays: None  
Unanimously approved

#### AUDIT APPROVED

A motion was made by Councilperson Saum, seconded by Councilperson LaFay that Audit #5 for May 2009 be approved for the Town of Perinton, pursuant to Town Law, and the Town Clerk presented duly verified bills as follows:

|                                     |                    |
|-------------------------------------|--------------------|
| MAY AUDIT                           |                    |
| General Fund                        | \$100,409.65       |
| Town Outside of Village             | 144,240.81         |
| Recreation                          | 58,927.02          |
| Highway General Repair              | 244,049.03         |
| Highway Snow & Miscellaneous        | 94,479.73          |
| Joint Sewer                         | 27,606.25          |
| Special Recreation                  | 60,000.00          |
| Debt Service Sewer                  | 792.00             |
| Perinton Ambulance District         | 4,042.28           |
| Egypt Fire Protection               | 194.71             |
| Fairmont Hills Maintenance District | 859.37             |
| Wisteria Grove Maintenance District | 40.00              |
| O'Connor Road Relocation Project    | 2,493.63           |
| DPW Redevelopment                   | 30,563.59          |
| RS&E Pedestrian Bridge Project      | <u>1,535.70</u>    |
|                                     | \$770,233.77 Total |

The above items were numbers 73936-74175.

|                                 |                    |
|---------------------------------|--------------------|
| MAY MANUAL                      |                    |
| General Fund                    | \$64,838.92        |
| Town Outside of Village         | 2,465.43           |
| Recreation                      | 28,667.22          |
| Joint Sewer                     | 9,793.54           |
| Midlands Lighting District      | 419.60             |
| Lake Lacoma Lighting District   | 12.81              |
| Meadows Lighting District       | 407.48             |
| Deer Run Lighting District      | 1,463.79           |
| Misty Meadows Lighting District | <u>113.41</u>      |
|                                 | \$108,182.20 Total |

The above items were paid with checks # 73901-73903,73914-73919,73932-73934.

Ayes: Smith, Knapp, Saum, LaFay, Havens  
Nays: None  
Unanimously approved

There being no further business before the Board and no further questions from the audience, the meeting was adjourned at 8:30 pm.

Respectfully submitted,

Jennifer A. West  
Town Clerk

