

## VILLAGE OF CORNWALL-ON-HUDSON BOARD OF TRUSTEES

August 6, 2011

The special meeting of the Board of Trustees was called to order at 10:00 A.M., with the Pledge of Allegiance, at 325 Hudson St., Cornwall-on-Hudson, N.Y.

The following Board Members were in attendance:

Mayor Brendan G. Coyne  
Trustee Mark J. Edsall  
Trustee Barbara J. Gosda  
Trustee James P. Kane  
Trustee Andrew Argenio

Also present were: DPW Superintendent David Halvorsen, Water Superintendent Robert June, and Village Clerk Jeanne Mahoney.

Mayor Coyne thanked everyone for coming to this **“Dialogue with the Village”**. Those who wish to speak were asked to first state their name for the record.

Jay Ziegler is concerned that a subcontractor, hired by Central Hudson Gas & Electric, is tearing up Cherry Avenue and many other Village roadways to replace service lines.

After some discussion, Mayor Coyne indicated that the Board will contact Central Hudson.

Jan Smith is concerned with the method being used by Taylor Biomass to count tonnage. She read that Orange County Executive Edward Diana is close to a deal to haul 500 tons of waste monthly to the Taylor facility. Currently the Village hauls our waste to the County, and she wants assurance that the Village’s monthly tonnage is not also being counted into the County number – double counting.

Mayor Coyne offered to speak with Mr. Rollins of Taylor Biomass and ask for clarification. Trustee Argenio suggested that the Village should put this out for bid to “see what’s out there” before committing to a 20 year deal with Taylor. Discussion followed.

John Wells had several concerns to share with the Board. First – road conditions/quality of Village roadways. Many Village roadways are in disrepair. Second – high percentage of water loss in the system. Third – consideration should be given to a merge of the Town and Village to save money.

Discussion followed on each topic. Trustee Edsall indicated that he has met with DPW Superintendent Halvorsen regarding roadway improvements. They are working on a multi-year plan that will first identify conditions of Village roadways and what type of repair work is needed. Roadways determined to be in the most need will then be repaired first. When the time comes to do the work, Board members will have to decide whether or not to borrow money. Our budget cannot carry these improvements.

Steps are being taken by the Water Department to find leaks in the system and repair them.

Discussion about merging services between the Town and Village brought forth differences of opinion as to potential savings to taxpayers both short and long term. In addition, residents spoke of concerns with possible reduction in services and longer response times.

Jon Chase stated that people should be applying “rational processes” to the services we require (i.e. police, fire, dpw), and then consider changes that might occur with consolidation of services. It is “hard to imagine” that costs would increase.

Andy Maroney is concerned with conditions of the soil at the DPW facility on Shore Road. He indicated the site was used as a “dump” until the 1970’s when it was “capped off”. He further indicated that the Village “uncapped” the site when footings were dug for construction of the DPW building in 2005. He asked if the Village had received certification from an expert that no toxic materials were present.

Trustee Kane replied that the site was closed in compliance with DEC regulations back in the 1970’s.

Melissa Vellone asked if the site has ever been tested for toxic materials. She asked Trustee Edsall for his “recollection” of this project.

Trustee Edsall responded that the Village undertook a project in conjunction with the LDC to build a building because the Department of Public Works had come before the Board asking for help. Village vehicles and equipment could no longer fit into the existing facility. Residents expecting better services (i.e. plowing roads faster) created a need for additional and bigger equipment. A plan was developed for construction of a facility on the **same site** as the sanitation garage (which has been located on this site for some time). A Local Development Corporation (LDC) was used not only by our Village but many others across the state, to provide a “legal way to sidestep costs of prevailing rate construction”. At least 13 meetings took place where this project was discussed between 2005 and 2006. A public hearing was held on the Shore Road lease between the Village and the LDC. It was the **LDC** that built this facility **not** the Village. In addition a public hearing was held on May 16, 2005 for the sale of the Hudson Street property from the Village to the LDC. Construction started mid-2005. Former DPW Superintendent Robert Gilmore came to the Village and reported on the closure status with the DEC. He also reported that the facility wasn’t built by digging down to deep depths; truckloads of fill were brought in to this low area. Footings were basically built almost on grade. With regard to the “uncapping” people keep talking about, they didn’t dig down 4 feet for footings. They built the footings and filled in area around the building. The Village DPW along with the LDC effectively built site improvements, footings and foundation. In mid-2005 contractors that the LDC signed contracts with were brought in to continue construction of the facility.

David House asked Trustee Edsall for clarification of who built the foundation. It is his understanding that the Village performed that work.

Melissa Vellone researched “legal uses” of an LDC during that time. An LDC can bond money. A legal use would have been if they took the financial responsibility onto themselves; however a month before the LDC signed a contract with the builder, the Village bonded the money.

Trustee Edsall replied that Howard Protter, the Attorney for the Village at that time and current lead attorney for the NYS Bar Association for Municipal Attorneys, obviously would disagree. Mr. Protter

represented to the Village in a legal memorandum the mechanism he established was legal. Mr. Edsall then stated that rather than looking backward, he prefers to accomplish something. He wants to see that building fixed, solve problems, and get DPW and Water employees back in there.

Lengthy and sometimes heated discussion followed.

John Wells thought today was a “sit down discussion” and right now we are not “at that place”. The Trustees are giving up their Saturday to have a discussion. People have good ideas and should share them in a positive, productive, and cordial way.

Jon Chase reminded Trustee Edsall that the contract between the LDC and Burns & Whalen reserved site work for the Village, therefore that foundation work was done outside that agreement.

Trustee Edsall replied that he is here today for an open discussion with the public on positive things that can be accomplished in the Village. He is not here to listen to Mr. Chase “rehash a failed lawsuit” he filed against the Village.

Mr. Chase referred to a letter written to the Board by Mr. Fitzsimmons (Engineer for the Village at that time) recommending against building that facility without driven piles.

Ms. Vellone read a list of questions from concerned residents. She hopes that at some point, every board member is held accountable not just Mr. Edsall. She asked that time be given to answer these questions.

Trustee Kane reported that the Board is taking action. First, the Hacker Murphy law firm was engaged to review the file, including all the items brought up by Ms. Vellone, and has issued an opinion. Since this matter is in contemplation of litigation, the opinion cannot be disclosed to the public; however, it contains information on whom the Village can potentially sue. Since the Village was involved in the construction, we may bear some of the responsibility in general. The Board is now considering our “next step”. Second, in July of 2010, the Board hired an engineer to take a look at the premises along with a structural engineer and a geotechnical engineer was hired to look at the soils. Former Mayor Gross and the former Deputy Mayor held up payment causing delays in receiving those reports. Things are now moving again and Mr. Wieboldt will be making a presentation at Monday’s work session. He is expected to provide a design and cost estimate to correct the building to make it occupiable. It all comes down to whether or not this Board will spend the money to correct the building.

Kevin Quigley stated that the bottom line is that the Board needs to move forward in fixing this or the DPW will soon end up changing oil in the lot again. There is always time for litigation, but “dwelling in the past” isn’t going to fix anything. The Village is “drowning financially” and this other stuff “has got to stop”.

Gary Polonski supports a lawsuit(s) now because it is the only way to “embroil the litigation” with the responsible people. He detects a “reluctance to sue” because we might “get stuck with some of the cost”. He is concerned that if the Board waits until the building gets fixed to sue, they never will.

Trustee Gosda stated that “we’ve been down this road before”. We have a filtration plant sitting on the mountain that had contractors we “never went after”. We have a 3.8 million dollar debt now because we didn’t take action then. She does not want the residents of this community to pay for the DPW building

twice. We need to “explore all of our options” with this building (i.e. how much is it worth, what is the ultimate value to the community) in relation to our current debt and the work that needs to get done.

Trustee Edsall reported that prior to retaining Hacker Murphy, the Board interviewed several other firms to determine who would be best suited to review litigation potential. Every single law firm that was interviewed, each an “expert in construction litigation”, said not to start a lawsuit until we know what the damages are. In response to Ms. Gosda’s statement about the Black Rock Plant, Mr. Edsall explained that the Village did, in fact, go “after the contractor”. The contractor had gone bankrupt, so we went after the bonding company and they went bankrupt as well. It is what is called “bad luck” but not from lack of trying.

Trustee Argenio agrees with Mr. Quigley’s remarks. That is why over a month ago he brought up the importance of getting reports back from engineers now. The bid process can take several months and he is concerned that by then it will be too late to get any work started until spring.

Anthony Missere stated that Mrs. Gosda has voiced concerns with litigation costs incurred. He asked if she has ever taken “culpability for generating some of those legal fees”. He referred to litigation he brought and will bring against the Village in regard to the previous Building Inspector that she and former Mayor Gross “personally brought in”. The costs associated with this litigation are due to either “Gross oversights” or items that should have been brought to the Boards attention by counsel representing the Village at the time. He suggested the Board consider “going after” them as well. He indicated that over \$11,000 has been spent by the Village so far this year to defend itself against a failed lawsuit brought on by former Mayor Gross and supported by Mrs. Gosda. The Clerk’s office was recently served notice that the former treasurer has filed an Article 78 petition against the Village. The petition contains affidavits from former Mayor Gross and Trustee Gosda in support of the Plaintiff. He reminded this Board of a plan brought to local businessmen 4 years ago by former DPW Superintendent Gilmore to make improvements to the municipal lot and bandstand area. These businessmen offered to donate \$100,000 for these improvements if the board approved the plan within 30 days. Former Mayor Gross refused to work with a “gun to his head” so the plan was never considered by the Board. He would like to see this board work together, put aside personal/political agendas, and get to work on the business of the Village.

Trustee Gosda responded that due to possible litigation she will not comment on some of Mr. Missere’s statements; however, she would like to respond to the “\$100,000 parking lot”. It was brought to the Board by Mr. Gilmore with no engineering and no plans showing it was well thought out. The Board was then given only 30 days to respond. In regard to the budget line for litigation, it was her understanding that line was for “slip and fall” type of litigation that does occur in the normal business of the Village, not “general” business of the Village.

Trustee Argenio compared the “parking lot” to the “water fund where Bob went through that grant down there” without engineering money or a well thought out plan. We are now \$800,000 short of what is needed to perform the work.

Barry Gruber thanked Mayor Coyne and the Village Police Department for their help in bringing a resolution to a concern he brought to them at the last Board meeting.

David DeFreest is concerned with the “angst” in this room regarding the LDC and DPW building. It does not accomplish anything. He remembers discussions years before the LDC was formed regarding problems with the location of the DPW building off Hudson Street. (i.e. large tracker trailers could not

back up, and it was difficult for snow plows to turn around). There was talk at that time about going out to bid, but those talks stalled when estimated costs came in too high. An LDC was established instead as a legal way to circumvent some NYS bidding requirements in order to save money. Its members were upstanding members of this community. All this was covered by local newspapers and discussed in public meetings. It was certainly not a “conspiratorial plot to have a disaster”. He is a contractor and was asked if he was interested in purchasing the DPW property on Hudson St. The contractor who did “got hosed” in his opinion, paying about \$150,000 more than it was worth. He does not think former Mayors Moulton or Gross went out in a fashion to “create this disaster”. This Village Board is doing its best to try to go forward remedy the situation. Those involved in the planning and execution of construction of the new facility did not go out to “cook up this big deal” that everyone is making it out to be. Although mistakes may have been made, we should get past them with a “little less angst in the room”. He reminded everyone that former Building Inspector Yancewicz may have caused some of the issues brought up today when he removed Village files from the office and took them home. Only after the files were returned was it discovered important documents were missing. He suggested that people stop arguing about who is at fault and start offering productive solutions on moving forward because it will cost every taxpayer in the end.

Gary Polonski agrees that there is a lot of “angst” in the room with good reason. Shortcuts were taken in order to “avoid checks and balances” and there is no paper trail, which has made people nervous. There does not appear to be enough effort being put into finding out what “went on”. Everyone wants the building fixed, but taxpayers should not have to pay for it. The person(s) responsible “for the shoddy work” should pay.

Mayor Coyne reminded everyone that since April 2011 the Board has been regularly discussing potential litigation with special counsel. There has been no reluctance from this Board.

Emily Thomas indicated that the “angst” is about responsibility. It is good to know the Village is moving forward. Taxpayers have already paid for the building once, and should not have to pay for it again.

Melissa Vellone stated that the Village is 2.1 square miles. Of that 2.0 square miles is land, and 0.1 is water. That facility lies right at the line of land and water. As an engineer, she has been through every report on the Village government website and has concerns with the other buildings on the site. (i.e. were they constructed properly?) The Fitzsimmons letter agrees with the 1970’s report in that spreader footings cannot be done. His letter clearly stated that you would have to drive piles. A foundation would not be stable at this site on top of the subsurface conditions they investigated in 1973 when they “capped it off”. Subsurface testing was done and boorings taken at that time. A similar project was considered at that time and they decided it would be too expensive.

Having concluded the two hour dialog, Trustee Edsall moved to adjourn the meeting at 12:05 PM which was seconded by Trustee Kane and carried by a vote of 5 Ayes and 0 Nays.