

September 15, 2016 – Regular Meeting

The regular meeting of the Gardiner Town Board was held this evening at 7:00 PM at the Gardiner Town Hall. Present were Supervisor Majestic along with Councilwoman Walls and Councilmen Hinson & Reynolds. Councilman Dukler was absent. There were approximately 10± audience members.

### **ANNOUNCEMENTS**

Sept. 27 – Budget special meeting 7 PM.

Sept. 29 – Solar Moratorium meeting 7 PM

Oct. 10 & 12 – Town Hall closed due to Columbus Day & Yom Kippur holiday

### **ULSTER COUNTY PLANNING BOARD**

Town resident Linda Geary has expressed an interest in serving on the Ulster County Planning Board. Current member Katherine Hudson has tendered her resignation as she will be re-locating out of state.

### **WALLKILL RIVER CONTAMINATION**

The Town has been informed of high toxin levels in the Wallkill River. The toxins are harmful to both humans and animals and all are encouraged to avoid any contact with the river.

### **PUBLIC HEARING SOLAR MORATORIUM CONTINUATION**

The public hearing for a Solar Moratorium was continued from last month. Supervisor Majestic asked audience members if they had any questions or comments.

Matt Calardo – spoke about his support of the moratorium and suggested creating a special committee for advising the Town Board.

Michael Moriello – commented that he was pleased that the intention is to move this along quickly. He is concerned with the resulting zoning.

Joan Mitchell – asked the results of the Ulster County Planning Board review. Supervisor Majestic read the report and recommendations from the Board.

Councilman Hinson – commented that the this moratorium is for the establishment of solar farms but there is a need to clarify the technology.

### **CLOSE PUBLIC HEARING**

On motion of Councilwoman Walls, seconded by Supervisor Majestic and carried, the public hearing for the Solar Moratorium Local Law was closed at 7:15 PM.

### **ADOPTION OF SOLAR MORATORIUM LOCAL LAW**

On motion of Councilwoman Walls, seconded by Supervisor Majestic and carried, the Local Law entitled Ground Mounted Solar Energy Facilities Moratorium of the Town of Gardiner was adopted as follows:

1. This local law shall be known as the “Ground Mounted Solar Energy Facilities Moratorium Law of the Town of Gardiner, New York.”
2. Purpose

The Town Board finds that without adequate regulations governing the location and placement of ground mounted solar energy facilities, the installation of same may have a detrimental impact on nearby properties and on the community in general. Such facilities may have adverse visual impacts on the community and may have a detrimental effect on

the value of properties and may impair important agricultural resources within the Town of Gardiner. Presently the Town of Gardiner does not specifically regulate the location of such facilities.

The purpose of this moratorium is to allow the Town of Gardiner to temporarily halt the siting and installation of ground mounted solar energy facilities for a period of nine (9) months to enable the Town to adopt appropriate regulations and appropriate local laws regarding the installation, siting, screening and use of ground mounted solar energy facilities in the Town of Gardiner. It is intended that regulations will be drafted to govern the location, size and siting of such facilities within the Town while enabling such facilities to be developed in the interest of promoting the use of renewable energy sources. The Town declares the enactment of this local law as necessary to protect the public interest and the public health, safety and welfare during the course of this moratorium.

3. Authorization

This local law is adopted pursuant to Municipal Home Rule Law Section 10 (1) (i) and 10(1) (ii)(a)(14). It is the intention of the Town Board pursuant to Municipal Home Rule Law Section 10(1)(ii)(d)(3) to supersede the following provisions of the New York State Town Law; Town Law Section 367-a(5) and 274-a(8) 274-b(6) and 274-b(8).

4. Scope

Ground Mounted Solar Energy Facility: Any facility designed to generate electric power to be marketed, sold or used except as set forth herein.. Notwithstanding the foregoing, excluded from this definition and from the scope of this moratorium are solar energy facilities for a residential dwelling or a commercial business which are mounted upon or affixed to a residential dwelling or commercial building or which are ground mounted immediately adjacent to said structure and which are designed to generate only enough electric power sufficient for the use of said residence or commercial business.,

5. Moratorium

- a) During the effective period of this local law, neither the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Department or the Code Enforcement Officer shall accept, process, interpret, or approve any application for the installation of a ground mounted solar energy facility except as set forth in Section 7 below.
- b) This moratorium shall apply to all currently pending applications and all future applications during the course of this moratorium of ground mounted solar energy facilities.

6. Duration

The term of this moratorium shall be a period of nine (9) months from the date that this law is filed with the Secretary of State of the State of New York.

7. Hardship

- a) Should any owner of real property believe that they have suffered an unnecessary and extreme hardship through the application of the terms of this local law, said owner may apply to the Town Board of the Town of Gardiner in writing for a waiver from strict compliance with this local law. Such owner must submit such proof as they deem appropriate to demonstrate an unnecessary and extreme hardship. However a mere delay in being permitted to make an application or in waiting for a decision on an application or a special permit site plan subdivision variance relating to the use of their property for a ground mounted solar energy facility site shall not be deemed to be an unnecessary hardship.
- b) Upon submission of a written application to the Town Clerk by the property owner seeking a waiver of the local law, the Town Board shall within 30 days of receipt of said application schedule a public hearing at a future date, which date shall be no later than 60 days after receipt of the written application. Notice of said public hearing shall be made upon five days prior written notice in the official newspaper of the Town and notice of said public hearing shall be made by regular mail to all adjoining landowners of the application as such addresses are shown upon the tax rolls.
- c) At said public hearing the property owner and any other party wishing to present evidence or testimony with regard to the application shall have an opportunity to be heard. Within 15 days of the close of said public hearing the Town Board shall render its decision either granting or denying the application for a variation of the strict compliance of this local law.

#### 8. Penalties for Offenses

Any person or entity that shall violate the terms of this local law shall be guilty of a violation and subjected to a fine of not less than \$250.00 per day and for imprisonment of 15 days. Each day that the violation continues shall be deemed a separate offense. In addition the Town may enforce this local law by seeking an injunction or any other legal remedy it deems appropriate.

#### 9. Conflicts

All local laws of the Town of Gardiner that are in conflict with the provisions of this local law are hereby superseded by this local law during the nine (9) month moratorium set forth above.

#### 10. Severability

In the event that a court of competent jurisdiction determines that any portion of this law is invalid in whole or in part, the effect of said decision shall be limited to the provisions which are expressed stated to be invalid and all other provisions of this law shall continue to be in full force and effect.

#### 11. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

**PARKS & RECREATION**

Town Board members were given an updated draft on the Parks & Recreation committee charge.

**RESOLUTION – OHIOVILLE ACRES – SEWER WORKS CORPORATION**

Consent of the Town Board to the Incorporation of A Sewer Works Corporation Pursuant to Section 116 of the Transportation Corporation Law of New York State  
Offered by Councilwoman Walls

**WHEREAS**, Ohioville Acres Corp. (the “Developer”) is the Developer of a subdivision development in the Town of Gardiner (the “Town”) known as Ohioville Acres (the “Project”); and,

**WHEREAS**, the Project will include the construction of up to 135 single family residences and a neighborhood commercial retail/office building and recreational facilities at Ohioville Acres, located on 264.7 acres in the Town of Gardiner, S/B/L #94.002-1-3 (the “Service Area”) and a community sewerage system is slated to service said Project; and,

**WHEREAS**, the proposed sewage supply system and sewer mains will connect to a self contained community sewer system, situate upon the 264.7 acres of lands to be developed aforesaid; and,

**WHEREAS**, the Ohioville Acres Subdivision is not presently serviced by a sewer district and it is the plan of the Town of Gardiner that the Ohioville Acres community sewage systems will be included within a municipal sewage district; and,

**WHEREAS**, the sewer supply will be provided by the Ohioville Acres Sewer Company, Inc., which entity will contract with the subdivision inhabitants for the treatment of sewer at the Ohioville Acres Subdivision until such time as the community sewerage system is taken over by the Town of Gardiner by way of written Takeover Agreement; and,

**WHEREAS**, the terms and conditions of the sewer treatment for the Ohioville Acres Subdivision will be governed by a Community Sewerage System Contract between the Ohioville Acres Sewer Company, Inc. and all fee owners of subdivided lots within the Ohioville Acres Subdivision until such time as the Town of Gardiner forms a sewer district and takes over the sewage treatment works for the community sewerage system servicing the Ohioville Acres Subdivision; and,

**WHEREAS**, the Applicant respectfully requests that the Town of Gardiner (the “Town”) consent to the incorporation of the said sewer works corporation for the Project pursuant to Section 116 of the Transportation Corporation Law, said corporation to be known as the Ohioville Acres Sewer Company, Inc.; and,

**WHEREAS**, the Project was the subject of a Type 1 Action coordinated review under SEQRA in which the Town Board was the lead agency and approved an Environmental Impact Statement [EIS] Findings Statement by said Town of Gardiner Town Board on November 8, 2007; and,

**WHEREAS**, Conditional Final Subdivision Approval was granted by the Town of Gardiner Planning Board on May 19, 2009 for the Ohioville Acres Subdivision, which has been extended, as needed, from time to time; and,

**WHEREAS**, during the passage of time and as a result of various post approval proceedings with the Ulster County Health Department, the Town of Gardiner Town Board, the Town of Gardiner Planning Board and the New York State Department of Environmental Conservation, a project change resulted in the necessity for the Applicant to incorporate a community sewerage system into the Ohioville Acres development plans; and,

**WHEREAS**, after review by the Town of Gardiner Planning Board as Lead Agency under SEQRA, wherein the Reapplication and associated documentation detailing the project change for the community sewerage system was reviewed and following a Public Hearing thereupon, the Town of Gardiner Planning Board granted a Negative Declaration of Environmental Significance on May 14, 2015; and,

**WHEREAS**, a public hearing regarding the formation of the Ohioville Acres Central Community Sewage Disposal System District No. 1 of the Town of Gardiner was duly held by the Town Board of the Town of Gardiner on October 13, 2015; and,

**WHEREAS**, pursuant to the Town of Gardiner Town Board Resolution No. 108-2015, the Town of Gardiner authorized, by notice, the adoption of a Resolution Authorizing Review of Map, Plan and Report for Formation of the Ohioville Acres Central Community Sewage Disposal System District No. 1 for Ohioville Acres; and,

**WHEREAS**, the Developer has submitted a June 9, 2016 “Engineering Report for Providing Central Community Sewage Disposal Systems” for the Ohioville Acres Subdivision to the Town of Gardiner Town Board for its review and comment; and,

**WHEREAS**, the Developer has submitted detailed plans, maps and associated documentation to the Town of Gardiner Town Board, the Town of Gardiner Planning Board and the Ulster County Health Department in accordance with the Transportation Corporation Law of New York State; and,

**WHEREAS**, the Developer has requested that the Town of Gardiner Town Board review this matter and that the Town Board and Town Highway Superintendent consent to the incorporation of the Ohioville Acres Sewer Company, Inc.; and,

**WHEREAS**, the Sewer Company aforesaid shall not be deemed to be lawfully operating until the Ulster County Health Department and the Town of Gardiner duly approve or consent to the incorporation of the Sewerage Supply Company herewith and all conditions to the due operation thereof are complied with. At such time the Sewer Corporation shall operate the system until such time as it is conveyed to and accepted by a Town of Gardiner sewer district.

**NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE TOWN BOARD OF THE TOWN OF GARDINER, ULSTER COUNTY, NEW YORK:**

**THAT** the Town Board of the Town of Gardiner hereby consents to incorporation of a sewer works corporation for the Ohioville Acres Subdivision (the “Service Area”), for the purposes set forth herein and pursuant to Section 116 of the Transportation Corporation Law to be known as the Ohioville Acres Sewer Company, Inc.; and,

**IT IS FURTHER RESOLVED** that the Town Supervisor, Town Clerk and the Attorney for the Town of Gardiner are hereby directed to take such actions as are necessary to implement this resolution. The Town Supervisor is directed to forthwith inform the Developer of any additional information and documentation as may be necessary to execute the appropriate documentation required for formation of the corporation.

**IT IS FURTHER RESOLVED** that this resolution is conditioned upon the following:

1. Approval for Community Sewerage Systems is limited to the area described in the Application consisting of 264.7 acres of land (SBL 94.002-1-3);

2. The Consent is not applicable to the off-site treatment, storage or use of sewer as such treatment, storage or uses were never contemplated or reviewed during the approval process. The Applicant and the Corporation will include language in the requisite Indemnity Agreement reflecting this condition;

3. Execution of an Indemnity Agreement by Ohioville Acres and, after formation, the Ohioville Acres Sewer Company, Inc. indemnifying the Town of Gardiner for any matters relating to sewer treatment, storage, use, etc. The form and content is to be approved by the Attorney for the town;

4. Unless prohibited by state regulators, prior to construction, Ohioville Acres and the Ohioville Acres Sewer Company, Inc. are to provide a means of financial security to ensure that there is sufficient capital on hand to make necessary replacements, repairs, or upgrades during the operation and until the system is owned and operated by the Town, including those matters set forth in Sections 119(1) and (2) of the Transportation Corporations Law. The amount, form and content of said security is to be approved by the Town and shall be in place prior to the issuance of a building permit;

5. Ohioville Acres and the Ohioville Acres Sewer Company, Inc., once incorporated, shall provide proof of insurance for the Sewer Works Corporation by submission of a Certificate of Insurance naming the Town of Gardiner as an additional insured on a primary and non-contributory basis, which shall be in place prior to the issuance of a building permit and which shall be maintained in effect until such time as the Sewer Company formally dissolves as a corporate entity.

6. Confirmation that the Ulster County Health Department has reviewed and approved the maps and specifications of the proposed system shall be provided.

7. During construction of the Proposed System the Town or its designee, at the cost of the Developer, shall inspect the work at reasonable intervals.

8. The transfer of the system to the Town shall be at no cost to the Town.

9. Pursuant to Section 119(3(a)) of the Transportation Corporation Law, the stock of the corporation shall be placed in escrow with the Town of Gardiner.

Seconded by Councilman Reynolds and carried.

**RESOLUTION MOHONK PRESERVE**

**Mohonk Preserve Supplemental Funding - PIN 8758.50**

Offered by Councilwoman Walls

Authorizing the implementation, and funding in the first instance 100% of the Federal aid and State Program-aid eligible costs, of a transportation federal-aid project, and appropriating funds therefore.

WHEREAS, a Project for the **Replacement of Trapps Bridge over Route 44/55 in the Town of Gardiner, Ulster County, Identified as PIN 8758.50** (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 0% Federal funds and 100% non-federal funds; and

WHEREAS, the Town of Gardiner, as the sponsor of the project, together with Mohonk Preserve, Inc, as applicant, applied to NYSDOT and received approval for the Transportation Enhancement Project (TEP) funding of the project to be performed pursuant to an agreement between the **Town of Gardiner, the Mohonk Preserve, Inc. and NYSDOT** (the "3-Way Agreement"); and

WHEREAS, pursuant to such 3-Way Agreement, the **Mohonk Preserve, Inc.** will act as Project Manager of the Project and shall provide for the funding, construction operation and maintenance thereof, and NYSDOT shall pay or reimburse to the **Mohonk Preserve, Inc.**, approved eligible Project costs from the \$304,560 TEP Funding as adopted by the **Town of Gardiner**, as Sponsor, in Resolution 50-2007 on February 13, 2007 and the **Mohonk Preserve, Inc.**, as Applicant, June 24, 2001.

WHEREAS, it was subsequently found necessary to undertake additional construction work not contemplated in the original agreement authorized by the previous Resolutions; and

NOW, THEREFORE, the **Gardiner Town Board** duly convened does hereby

RESOLVE, that the **Gardiner Town Board** hereby approves the above-subject project; and it is hereby further

RESOLVED, that the **Gardiner Town Board** hereby endorses the **Mohonk Preserve, Inc.** to pay in the first instance 100% of the federal and non-federal share of the \$340,000 additional construction work for the Project or portions thereof; and it is further

RESOLVED, that pursuant to the Memorandum of Agreement and the 3-Way Agreement, the **Town of Gardiner** bears no responsibility for costs associated with the Project, as revised; and it is further

RESOLVED, that the **Gardiner Town Supervisor** be and is hereby authorized to execute all necessary Agreements or certifications for Federal Aid and/or applicable State Aid on behalf of the **Town of Gardiner** with the New York State Department of Transportation in connection with the accomplishment of the Project and the administration of the 3-Way Agreement, and it is further

RESOLVED, that in addition to the **Gardiner Town Supervisor**, the following municipal titles: are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

Seconded by Councilman Reynolds and carried.

**PARKS & RECREATION AND ENVIRONMENTAL CONSERVATION COMMISSION INTERVIEW SCHEDULE**

Board members agreed to hold the interviews for the above caption commissions on Sept. 22, 2016.

**HIGHWAY DEPARTMENT**

On motion of Supervisor Majestic, seconded by Councilman Hinson and carried, the Town Board agreed to the longevity bonus of \$600 to be given to recent retiree Daniel Keegan, who retired 4 days prior to his anniversary date. Board members believe it was an honest mistake. Mr. Keegan did not receive any guidance on the retirement process through the Town.

**BANK CHARGE REIMBURSEMENT**

On motion of Supervisor Majestic, seconded by Councilman Hinson and carried, the \$12.00 bank charge incurred by a highway employee for overdraft charge was authorized for payment.

**HIGHWAY BACKHOE REPLACEMENT**

Superintendent of Highways Stiscia spoke to the Town Board about his need to replace the 2005 Komatsu backhoe. The piece of equipment is used every day. It has broken down several times this year and has cost \$11,000 in repairs not including the cost of the rental of a replacement backhoe. Parts are difficult to find and are very pricey. Mr. Stiscia has received 2 quotes from Jesco and HO Penn. Financing is available. Mr. Stiscia is asking the Town Board to keep this on their radar for the budget.

**MINUTES**

The minutes of August 9, 2016 were approved as written on motion of Supervisor Majestic, seconded by Councilwoman Walls and carried.

**SUPERVISOR MONTHLY REPORT**

On motion of Councilwoman Walls, seconded by Councilman Hinson and carried, the Supervisors September report was approved as presented.

**CLAIMS**

Claims were approved for payment on motion of Councilwoman Walls, seconded by Supervisor Majestic and carried. They are listed on Abstract #8 as follows:

General Fund voucher #356-411 \$28323.42; Highway Fund voucher #190-212 \$14652.28; Sewer Fund voucher #26-31 \$5178.49.

**BUDGET TRANSFERS**

**Resolution No. 83** – Budget Transfer in General Fund – Offered by Councilwoman Walls Resolved, pursuant to Section 122, Town Law, the 2016 Annual Budget, General Fund, is hereby amended to provide for the transfer of \$1144.31 from Acct No 00.02.3620.103 PS PT Clerk to Acct No. 00.01.1410.102 PS PY Clerk, \$306.48 from Acct No. 00.01.1620.476 CE Elevator Maintenance to Acct No. 00.01.1620.401 CE Building Misc.; \$447.60 from Acct No. 00.01.1620.413 CE General Repairs to Acct No. 00.01.1620.401 CE Misc.; \$241.00 from Acct No. 00.06.7110.413 CE Park Repairs to Acct No. 00.06.7110.401 CE Park Misc., \$42.00 from Acct No. 00.07.8020.421 CE Office Supplies PB to Acct No. 00.07.8020.401 CE Misc PB and

\$80.00 from Acct No. 00.07.8160.421 CE Office Supplies to Acct No. 00.07.8160.401 CE Misc. Landfill.

Seconded by Councilman Hinson and carried.

**Resolution No. 84** – Budget Transfer in Sewer Fund – Offered by Councilwoman Walls Resolved, pursuant to Section 122, Town Law, the 2016 Annual Budget, Sewer Fund, is hereby amended to provide for the transfer of \$46.00 from Acct No 03.07.8110.468 CE Repairs to Acct No. 03.07.8110.461 CE Lab Costs and \$222.00 from Acct No. 03.07.8110.468 CE Repairs to Acct No. 03.07.8110.469 CE Outside Prof. Services.

Seconded by Councilman Hinson and carried.

**Resolution No. 85** – Budget Transfer in Highway Fund – Offered by Councilman Hinson Resolved, pursuant to Section 122, Town Law, the 2016 Annual Budget, Highway Fund, is amended to provide for the transfer of \$ 2000.00 from Acct No. 01.04.5110.400 CE Contract Expense to Acct No. 01.04.5110.460 Outside Prof. Services.

Seconded by Supervisor Majestic and carried.

### **HIGHWAY UNION CONTRACT**

The Town is in receipt of a proposal for the highway union contract. This is just the first round. Supervisor Majestic & Councilman Reynolds met with the union representative and 2 highway employees to discuss the proposal. There are not a lot of changes, however Ms Majestic would like the Town Board to review the proposal. It was suggested that at the 1<sup>st</sup> meeting in October that the Town Board meet in executive session to further discuss the contract.

### **ULSTER-GREENE ARC GROUP HOME**

The Town has received a letter from the Ulster County ARC as notification of the intent to purchase a home on Sand Hill Road for persons with disabilities. A fact sheet about the home was attached with the letter. Board members were in support of the residence.

### **MONITORING WELLS AT LANDFILL PROPERTY**

Engineering firm Morris Associates has received a report from the well monitoring company that one (1) well was damaged and they were unable to obtain a sample. Tom Harvey of Morris Associates believes that the samples that they did obtain will be sufficient to complete the report. However this well needs to be repaired as soon as possible. Mr. Harvey believes Town employees will be able to repair the damage.

### **ADJOURNMENT**

At 8:10 PM, on motion of Councilwoman Walls, seconded by Councilman Hinson and carried, the meeting was adjourned.

Respectfully submitted,

Michelle L. Mosher  
Town Clerk