

SPECIAL TOWN BOARD MEETING was held on the 3<sup>rd</sup> day of June, 2010, at Munger Cottage, 183 Main Street, Cornwall NY 12518

PRESENT: Supervisor  
Councilpersons

D. KEVIN QUIGLEY  
ALEXANDER MAZZOCCA  
RANDOLPH CLARK  
MARY BETH GREENE-KRAFFT

ABSENT:

J. KERRY McGUINNESS

Also PRESENT: JIM LOEB, Attorney for Town, JAMES R. LOEB, Esq.

Supervisor QUIGLEY called the meeting to order at 4:15 P.M.

### **Pledge**

**NEW YORK MILITARY ACADEMY** – Supervisor QUIGLEY advised that the purpose of this meeting was to review the findings from the meeting with NYMA last Saturday. Since that date, the Board has been doing some homework as to what we could possibly do to help the Academy out. Supervisor QUIGLEY explained that they would have to go into closed session to confer with the Town Attorney and would then come out again to review the information we have so far. Motion to go into closed session was made by Councilman CLARK, seconded by Councilman MAZZOCCA.

**ROLL CALL VOTE:** Unanimous Aye. The Board went into closed session at 4:20 P.M.

The Board came out of closed session at 5:00 P.M. Motion to re-open Special Meeting was made by Councilman MAZZOCCA, seconded by Councilman CLARK.

**ROLL CALL VOTE:** Unanimous Aye.

Supervisor QUIGLEY explained that the Board received a confidential communication from Counsel not subject to foil but asked for a motion to allow this information to be discussed with the public. Motion to approve was made by Councilman CLARK, seconded by Councilman MAZZOCCA.

**ROLL CALL VOTE:** Unanimous Aye.

Attorney, JIM LOEB read the communication as follows: Dear Board Members: I am writing to you in connection with the possible acquisition by the Town of the property and improvements of New York Military Academy (“NYMA”). You have indicated to me that the Town may be considering acquiring the NYMA property and then leasing all or a portion of the property containing the buildings and other related facilities to NYMA so that it can continue to operate. This proposal presents a number of issues and concerns, many of which are not readily addressed.

Perhaps the chief legal issue raised by this proposal is the provision of Article VIII, Section 1 of the New York State Constitution. This Section prohibits a municipality from expending money for the benefit of a private concern unless that expenditure is in furtherance of a public purpose. In recent years, the public purpose doctrine has been broadened to incorporate matters which in the past might well have been prohibited. The broadening of the public purpose doctrine has come about through a number of eminent domain cases, the most prominent of which is the United States Supreme Court case of **Kelo v. City of New London, Connecticut**. In that case and in others which follow, the Municipality exercised its power of eminent domain to acquire property which in turn was conveyed to a third-party private

developer. While cases like the City of New London case are few in number, they do support a determination that the doctrine of public purpose has been broadened in the recent past.

The proposal that the Town acquire by purchase the lands and improvements of NYMA would seem to me to be at the very far reaches of that doctrine for a number of reasons. First and foremost, the proposal to acquire NYMA and then to lease it back is a scenario which does not appear to me to have been before any court for review and approval. What has taken place in the recent past is the acquisition by a municipality of property which it then conveys to a third-party developer for a private project. The basis for the determination of public purpose is that the developer creates jobs, pays taxes and generates economic activity and benefits to the municipality. The scenario at NYMA is decidedly different in that the property to be acquired by the Town from the private owner would then be immediately leased back to the same private owner. While it can be argued that the private owner's would generate economic benefits to support a finding of a public purpose, I am unable to find any authority which would support the acquisition of property from an owner followed by the lease back of that property to the same owner for the same activity which existed prior to the acquisition.

Before the Town proceeds further I suggest that the Town should secure an opinion of value on the NYMA property. The opinion should also include a fair rental value as well. The Town should also proceed with an environmental assessment of the land and buildings to identify any environmental issues. These activities as well as an evaluation of the buildings and other improvements would be part of the Town's due diligence.

If the Town were to acquire the NYMA property and to lease it back, the Town would be obligated to charge a fair and reasonable rental for the property. The leasing of the property by the Town would entail a permissive referendum which, should the Town so determine, can be a mandatory referendum.

Assuming that the Town decides not to lease all of the property it acquires from NYMA back to the school, then the question arises as to what use or uses will take place on the balance of the property. There could be as many as 60 acres of land which would fall into this category. The Town must have in place a plan for the use of that vacant land if it is to exhibit a good faith demonstration of public purpose.

As you know, in order for the Town to sell obligations the bond resolution of the Board must be adopted by a vote of not less than four Board members unless the resolution is adopted subject to a mandatory referendum. In that case three affirmative votes would suffice. In addition, in order to market those obligations there must be an opinion from a law firm that serves as bond counsel to the Town. I have reviewed this matter informally with the Town's bond counsel who expressed considerable concerns as to the appropriateness of this proposal. The bond counsel indicated his firm might well be reluctant and possibly unwilling to issue the necessary approving opinion. Finally, it would appear to bond counsel and to me that all or a substantial portion of any bonds sold would not be tax exempt. This would undoubtedly make the bonds more expensive for the Town because the interest rate would be higher.

If the Town Board directs, I will continue to explore the possibility of the Town acquiring NYMA lands and improvements and leasing back a portion to the school. However, at this time I must advise the Town Board that there are legal impediments to this transaction. Very truly yours, JAMES R. LOEB.

Attorney LOEB carefully explained each part of the letter as he read it and advised that copies will be made available at the Town Clerk's Office.

**Below is a summarized sampling of some of the public comments:**

Ken Brodmerkle asked if NYMA was coordinating on this with us, and are they aware and receptive of this plan. Supervisor QUIGLEY advised that there was a preliminary discussion on this last Saturday, but that it would have to go before their entire Board of Trustees.

Steve Price asked that if NYMA was to agree to put the property on the market, would that introduce the possibility of other groups coming in to buy it before the Town could. Supervisor QUIGLEY advised that if it goes on the open market; then that could happen.

JAMES LOEB explained that if we started today, we would have to negotiate a contract, not a lease, just a contract with NYMA and he is not sure how long it would take to negotiate a contract, hopefully not long. Mr. LOEB already checked the Title and is aware of what mortgages are on record. His estimate is that it would take no more than 30 days to do a contract. He advised that he would hope that during that period of time, we could get a statement of value from an appraiser and hoped we would be able to start the environmental study, which usually takes a long time. There could be underground fuel tanks, asbestos – flammable or something that could be left there, etc. He advised that he hoped that this could all be done by the end of July but did not know. However, just to borrow, you have to adopt a Resolution which we know will be subject to a mandatory referendum and that in and of itself will take at least 30 days because you have to have an election. Once that is over, there is a 20-day period where you may be subject to a lawsuit, and nobody in their right mind sells anything until that time period is over. Attorney LOEB explained that we are now looking at, plus or minus, best case date of Labor Day.

Rose Tamborino asked if it were true that if the property was taken over through eminent domain that the sellers often are not cooperative. She also asked how NYMA felt about this and if they wanted to remain in business. Attorney LOEB advised that he was speaking in general and not particularly about NYMA. Supervisor QUIGLEY advised that he and most of us would like for NYMA to stay open for another 100 years.

Mr. Tom Holmes advised that on behalf of the NYMA's Board of Trustees, they are absolutely committed to finding whatever route available to keeping it open. He is working with the Trustees right now and trying to find a solution. Mr. Holmes stated that he was 100% positive that this plan is going bring joy to our collective hearts including all of the Trustees. He advised that all of the Trustees are graduates of NYMA and all are willing to cooperate. Supervisor QUIGLEY asked how the fundraising drive going. Mr. Holms advised that they have raised under \$50,000 in actual cash, but did have pledges for more.

Peter Malone asked what if anything was preventing the Town from buying the note from the primary mortgage holder. Attorney LOEB advised that if his client were a private entity, that's exactly the advice he would be giving us, however, since we are a municipality in the State of New York, he would be very hesitant to do so. He does not believe that is an appropriate step for a municipality to take and feels we should buy it from the owner. If you are going to borrow money, it has to be for a public purpose.

Lynn Bellum asked if NYMA cannot get funding beyond this years graduation, is there another public use that will enable us to still acquire it. Supervisor QUIGLEY advised that we would be able to acquire it for a public use only; this entails creating and developing a professional plan.

Lorraine Bennet asked if the bonding would become the responsibility of all the taxpayers in both the Village and Town. Supervisor QUIGLEY advised that it would be Town and Village wide. Attorney LOEB advised that this would go under general tax and the general tax is Town wide which includes the Village. Ms. Bennet asked approximately how much we would have to borrow and how would it affect the taxes. Attorney LOEB advised that he used a figure of Six million dollars. If the Town went with the lease option, which is not tax exempt, then the interest rate would be about 6 or 7%. If the Town acquired this for a public purpose, then it would be a tax-exempt bond, and that rate is probably between 4 and 4.5%. Ms. Bennet advised that people have to understand what the bottom line is. She further advised that we would also have to understand that if the Town acquires it for public use, some of those buildings are not up to spec today or handicap accessible and she wondered why we would want it for ourselves.

Pat Harding asked Councilman CLARK if he could give us a per taxpayer amount. Councilman CLARK advised that JIM LOEB was working on that about 20 seconds before the meeting and has some very, very rough numbers. JIM LOEB advised that based on the current budget, the approximate figure on a house with a \$200,000 assessment, we are looking at roughly \$100 per year.

Dick Randazzo advised that he has lived here all his life and that NYMA has been a part of the community and hopes that they are here forever. Mr. Randazzo commended the Town Board for their efforts and thinking out of the box with this plan but stated that nobody knows where this is going to go legally and financially. He stated that he did not think it unreasonable for any proposal that we might consider to include a stipulation that if in fact the Town is not able to acquire the property; that NYMA will agree to an annexation of the property by the Village of Cornwall on Hudson. He further stated that at that point the Town and Village can determine whose interest it is in. Mr. Randazzo stated that he has seen in his work travels that many, many villages form strictly for the purpose of planning and zoning. He advised that the one issue that many people have here is of another village forming. Annexation would allow the Village of Cornwall on Hudson to control the planning and zoning. Mr. Randazzo stated that this community is bending over backwards to consider how we can help NYMA remain open in perpetuity, and he feels they need to bend over from their side and say that they would sign that annexation agreement. He encouraged the Board to include that stipulation in any agreement we had with NYMA.

Brendan Coyle advised that the future of this property is very important and he commended the Board for trying to come up with a solution and wanted to let them know that he appreciated their efforts.

Joseph Branch introduced himself as representative of NYMA 2.0 plan and suggested that if the public had questions that you go to the [NYMAfoundation.org](http://NYMAfoundation.org) website. His name and contact info is listed and he will answer any questions you may have. The whole group is very optimistic that they will remain open. Mr. Branch advised that he did not want any one person speaking for the Board of Trustees as the final decision is theirs.

Dave Carnwright advised that it was his understanding that the estimated value of the NYMA property was in the vicinity of 19 – 20 million and was wondering where the 6 million figure came from. Councilman CLARK advised that at the meeting at NYMA last Saturday, Captain Watts told them that in 2007, NYMA was appraised at 10.2 million, and since property values were devalued by 25%, that would give us a fair market value of approximately 8 million.

John Smith advised that the appraisal that was two to three years ago was for 10.5 million. Mr. Smith further advised that the Trustees are definitely interested that NYMA continues but there is an immediate concern for paying certain obligations and the Board of Trustees has a fiduciary obligation to do what is necessary to meet those obligations. Anything that is done by the 2.0 group or the Town or anybody else, there has to be a certain amount of money available within a time frame that has been set by the Board. The money required is 2.5 million by end of June and before it can re-open, they will need another 5 million.

One resident asked if the property could be used for a public school. Attorney LOEB was not sure if that could be done. The resident stated that perhaps the school district could purchase it from the Town. LOEB wanted to know for sure if the district would be willing to do so before we acquired the property. He agreed that this is the sort of partner we could deal with.

Rachel Speagen asked that given NYMA's timeline, is it even feasible to try any of these plans. Supervisor QUIGLEY advised that it may or may not be. Councilwoman KRAFFT advised that this is also a big concern of hers as we are so rushed. Ms. Speagen also asked if there was a plan B. Councilman CLARK advised that plan A was to purchase the property and lease it back to NYMA, plan B is to just purchase the property.

Supervisor QUIGLEY thanked everyone for attending and advised that some interesting comments and recommendations came out today's special meeting that the Board would further review.

There being no further business to conduct a motion to adjourn was made by Councilman CLARK, seconded by Councilman MAZZOCCA.

**ROLL CALL VOTE:** Unanimous Aye. Meeting adjourned at 6:15 P.M.

Renata McGee  
Stenographer/Deputy Town Clerk

Elaine Tilford Schmeer  
Town Clerk