

SPECIAL TOWN BOARD MEETING and WORK SESSION was held on the 7th day of June, 2010, in the First Floor Court Room, 183 Main Street, Cornwall NY 12518

PRESENT: Supervisor
Councilpersons

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

Also PRESENT: Attorney, STEVE GABA, representing Attorney for Town, JAMES R. LOEB, Esq.

Pledge

Supervisor QUIGLEY called the meeting to order at 7:10 P.M. Councilman MAZZOCCA recommended that we dedicate the meeting to NYMA. Supervisor QUIGLEY advised that we would address the NYMA issue first and then continue on to the Work Session. Supervisor QUIGLEY explained to the public that the Board would go into Closed Session with Town Counsel and shortly come back to discuss their findings on solutions for NYMA. Motion to go into Closed Session was made by Councilwoman GREENE-KRAFFT, seconded by Councilman McGUINNESS.

ROLL CALL VOTE: Unanimous Aye. Closed Session began at 7:15 P.M.

A motion to end Closed Session and return to Special Meeting was made by Councilman MAZZOCCA, seconded by Councilman McGUINNESS.

ROLL CALL VOTE: Unanimous Aye. Board resumed Special Meeting at 7:55 P.M.

Supervisor QUIGLEY advised that the Board was in Closed Session discussing a Resolution regarding NYMA and asked Attorney GABA to explain and read the Resolution. Attorney GABA advised that the Board is most anxious to explore every possible alternative available pertaining to the difficulties that NYMA is facing, and one possibility that we are looking at is the acquisition of the NYMA property. The terms and conditions of such acquisition is something that NYMA will have a large say in. The first steps in pursuing this, is to make a determination as to whether or not the acquisition of the property would serve a public purpose, and if so, what would the terms involve. Attorney GABA advised that what the Town is considering is a Resolution which would allow the Town to undertake a study to determine if the acquisition of the NYMA property would serve a public purpose, and also this Resolution will allow the opening of negotiations with NYMA in regard to a potential purchase. STEVE GABA read the draft Resolution as follows: WHEREAS, The Town Board of the Town of Cornwall believes that an opportunity may exist to acquire the land of the New York Military Academy ("NYMA") for the Town, and WHEREAS, before undertaking to obtain any lands for the Town, it is necessary and appropriate for the Town to consider whether such lands are suitable for public purposes; and WHEREAS, in order to pursue the purchase of any lands it is necessary and appropriate for the Town to establish the availability of the land and its potential purchase price; NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That the Town's Planning Consultant is hereby directed and authorized to review and report on the potential purchase of the NYMA property for public purposes; and
2. That the Town Attorneys are hereby authorized and directed to contact NYMA to discuss potential terms of purchase of the property by the Town;

The Resolution was moved on by Councilman MAZZOCCA, seconded by Councilman McGUINNESS.
ROLL CALL VOTE: Unanimous Aye.

Supervisor QUIGLEY asked if there were any public comments.

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

Lawrence Kenney asked the Board to define the term public use. Attorney GABA advised that public purpose is a very broad range and could be anything from taking land to establish a DPW on or parking or something along those lines, and could extend to taking land for revitalization or to maintain economic vitality. STEVE GABA explained that in a recent court case in Connecticut where certain lands were taken for the purpose of maintaining the local economy. GABA further explained that if you are going to take land for a municipality, it has to serve some form of public purpose and cannot be for the benefit of private individuals.

Rachel Skigan asked if it could be possible to do something green such as a solar farm or some kind of energy conservation / general power for the Town. Attorney GABA advised that it could be a possibility; and that if she wanted to put it in writing and send that in, that that is the type of thing that the planning consultants might consider.

Don asked that once we go into discussions with NYMA as to whether we will purchase the property, what was the next step. Councilman MAZZOCCA advised that there are quite a few steps but when a price is decided upon, we would have to borrow the money; when that time comes, there will be a public referendum at which time the Town and Village will vote on it. Don asked what the timeline would be to establish that process -- two to three weeks? Supervisor QUIGLEY advised that it would take more than just a few weeks and that he could not give a timeline at this time.

Pat Harding asked if the Town had an understanding with NYMA and if they are willing to wait while this process is going on. Captain Watts responded to the questions advising that they had a meeting with the Town Board and are willing to work with them, but that they did have time limitations.

Chris Harley advised that as of last week we had a lease-back option, and this week it seemed that the only option available is the public purpose one, and wanted clarification on this. Attorney GABA advised that he would not rule out the lease option as a public use possibility, and as with the Connecticut case, that the purposes of economic revitalization and economic stability of use is necessary. He asked everyone to please understand that when you start going to uses like that, which are not your traditional municipal functions, if the Town is going to borrow money for the purchase, we have to go to bond counsel, and they are going to have to certify that it is in fact a legitimate undertaking, and if we cannot get them to sign off on this, then we have a problem.

Gina Todd stated that at the last meeting the attorney frowned upon the lease-back option but what she was hearing today is that it may be a stretch but can still be done. Attorney GABA responded that both JIM LOEB and he agreed that the lease back-theory is tenuous but that's not to say that it is impossible but it definitely is a stretch, but that does not mean that we have given up on it. We will have to go into negotiations with NYMA and see where that takes us.

Keith Kelly asked if we are going to have exclusive rights during the negotiation period with NYMA. Supervisor QUIGLEY and Councilman McGUINNESS advised that they did not believe we would have those rights.

Mark Kotay advised that the impression given at last Thursday's meeting was that there would be more of a comprehensive plan of action to be taken tonight, and it seems that we are having the same conversation that we did then. He stated that he did not hear any more options tonight. STEVE GABA advised that another possibility tossed around was to have the Town lend its credit to NYMA, but unfortunately that is forbidden by the New York State Constitution. GABA explained that it's not that we haven't been trying to come up with other ways, but this is the straightest path to NYMA.

Councilman CLARK advised that he and the Supervisor also presented the idea of buying the development rights to NYMA last Saturday and that did not go over well. Councilman CLARK asked why Attorney GABA was here tonight fielding questions for the first time and Attorney LOEB is not here. Councilman CLARK stated that it seemed that LOEB appointed himself to be the liaison in this matter while STEVE GABA has done approximately 95% of all the work for us and he expected GABA to handle this matter. He further stated that members of the public asked him who was JIM LOEB, and why did he leave in the middle of the meeting. GABA advised that when the situation arose his initial reaction was that short of buying the property outright, he did not feel there was much that the Town could do. JIM LOEB through his many, many years of experience came up with the lease-back option and public purpose use; this is a novel theory and is really cutting edge stuff as the case in Connecticut is fairly recent. This being JIM's brainchild, the firm felt that at least in the initial stages, it would be better if LOEB came and presented it to the Board and Townspeople. Councilman CLARK advised that in order to get our facts straight, the idea came from Mark Edsall, Village Trustee, and himself along with Captain Watts at a previous meeting. Councilman CLARK wanted to know how STEVE GABA got thrown into this, and had to agree with Mr. Kotay that it seems like the same meeting we had last Thursday. Councilman CLARK asked how we are paying for Attorney GABA's services, when he asked JIM LOEB, he was informed that this would be a special expenditure, and he knows that the Board did not authorize special counsel. Attorney GABA advised that his presence is paid through the regular retainer agreement. Councilwoman GREENE-KRAFFT advised that in January we appointed the law firm. Councilman CLARK advised that if we are hiring special counsel to seek advice, then this Board should consider that and maybe hire a firm that can work twenty-four hours a day, seven days a week to show the urgency to NYMA that we are serious about acquiring this property. Supervisor QUIGLEY advised that the firm is doing everything we are asking them to do, and that this is not in the normal retainer we pay, this is uncharted waters. Councilman CLARK asked when we authorized special counsel, and if we did so, we could have pursued other avenues and secondly, this does fall under normal retainer. The Supervisor disagreed. Councilwoman GREENE-KRAFFT advised that we did hire the firm, and the important thing we should be discussing is the issue at hand and not the incidentals. Councilman CLARK advised that we could have hired a firm that would be negotiating on our behalf, we authorized as a Board that Tuesday morning to pursue all the possible avenues that were available to us and that was two weeks ago. Councilman CLARK further explained that last Thursday's meeting was supposed to have been a presentation from counsel with bond rates showing us what it was going to cost to go ahead and discuss these options with NYMA and try to obtain that property and hopefully continuing the school as is. Councilwoman GREENE-KRAFFT advised that there have been meetings with just two Board members, and as she has been saying all along, it should be open meetings with the entire Board in public. She further advised that we need to do our homework before something is done or said that could jeopardize everything, plus NYMA came to us at the last minute, with no disrespect to them, but she found out that discussions took place at the start of a parade, she was not aware that Board

members were meeting with NYMA. Councilwoman GREENE-KRAFFT felt that we should not be discussing anything right now, other than what we are doing, where we have to be, and legally what needs to be done; which is the process we have started, and then we will put it before the people as we gather as much information as we possibly can for us to make a decision, and for when it goes to a mandatory referendum that the public can vote for it, and they know what they are voting for and that's why we have our regular firm and we are moving forward. She stated that if anyone wanted to make a motion to do something different, that was fine, amounts and lists of firms should come to the table and we will discuss that, but for the time being, we have to move forward. She stated that we were notified on a Monday, had an emergency meeting on Tuesday night to discuss this possibility, of course, who are we going to call except the firm we have. Councilwoman GREENE-KRAFFT apologized to the public for even having this discussion. Councilman CLARK apologized for himself and stated that the Board could handle their own, to have counsel stand up and walk out on a Town meeting last Thursday night saying that he was too tired to handle the situation at this time was an insult to the Town and our Board. Councilman CLARK stated that it was about time that we do have this discussion and as far as the timeframe goes, there was a meeting with our Town planner who told us two and a half years ago that we could not really do anything with NYMA, why was NYMA overlooked in the comprehensive plan six years ago, we need to make some plans in a timely fashion with the information given and in his last three weeks he hasn't gained any new information other than there are ways to get things done that we are not pursuing. Councilman CLARK advised that we still need outside counsel to get this done and making sure the Town is getting the best bang for its buck, and if we are paying for a special counsel right now, he felt we should know how much are we paying. Councilman CLARK asked how quickly we could go from tonight's meeting to a mandatory referendum – was one month possible. Supervisor QUIGLEY advised that we have to go through appraisals, environmental, etc., and they cannot be done overnight, but could be expedited. Supervisor QUIGLEY advised that this is going to be a real estate deal and its going to take a lot of procedures and he does not know what different counsel would do to change any of that.

One resident stated that when things got heated at the last meeting and the Town attorney threatened to leave the meeting – that did not sit well with him since we are paying him. Councilwoman KRAFFT explained that the reason for that was that if those responses continued there could quite possibly be ramifications.

Terry Kotay advised that she was offended when at the very start of the meeting, the Attorney advised everyone that he was tired.

Dick Randazzo advised that we were getting off track, and felt that before the Town spent any more money, there should be an agreement with NYMA as to what the possibilities are going forward, what does this process encompass, what is the selling price, and what the possible terms might be. Mr. Randazzo reminded everyone that Captain Watts just said earlier that the Town can keep moving forward, but that NYMA has deadlines that they have to meet. Mr. Randazzo asked why the Board and the public was struggling to try to solve this problem when we do not even have the basic plan. He also reminded everyone to remember to add the stipulation that if all else fails, they agree to annexation by the Village. Dick added that it didn't make sense for the Town to spend thousands of dollars and at the end NYMA says sorry it's too late or we have other plans – if the Town is going to be on the hook, let's get NYMA on the hook. NYMA wants to survive and we want NYMA to stay – if NYMA goes, we want to have some control of the use of that property. He firmly believes that NYMA would be willing to agree to such an agreement. Dick felt that the Board had wasted valuable time and suggested that before the end of this week, NYMA and the Town should sit down together, draw up that framework agreement

and then we have a direction that we could go in, or we know where we are not going. He stated that there was a lot at stake here and the impact on this community could be tremendous no matter what the outcome is. Supervisor QUIGLEY and Councilman MAZZOCCA advised that that was the purpose of the Resolution and the Supervisor further stated that he was not going to release a dime until we have something sewn up.

Wynn Gold advised that Councilman CLARK hit on something that deserves more discussion – Wynn reviewed and made recommendations for the Comprehensive Plan six years ago and he was on the committee and does not remember why we didn't do anything for NYMA at that time and believes there are other areas that should be looked at again and wanted to know if there was any consideration for the re-opening comprehensive plan process. Councilman MCGUINNESS advised that it is on tonight's Work Session list.

Ken Brodmerkle asked if anyone from this Board had contacted the Village regarding annexation in the last three or four days. Supervisor QUIGLEY advised that he had brief conversations with some of them. Councilman CLARK advised that at the Saturday meeting with NYMA, Senator Larkin presented the annexation letter that he had prepared and it was a very hot topic at that time, and the result was that the annexation might be a postponement, but with the zoning laws that are there now, they could act quick enough to change it to what they wanted to do, so all we would be doing is stopping a village being created within a village, yet the annexation still has to be approved by NYMA and there are a couple of hurdles there.

Donna Olsen stated that she was aware that the alumni want to save NYMA, but she wanted to know if they were even interested in talking to the Town about selling to us, or are they willing to let it go to somebody else. Councilman CLARK advised that we have been talking to them, but that they had a fiduciary responsibility to present the best case for NYMA. Donna Olsen asked if they were at all concerned about what will happen to our community if they do not sell it to us. Councilman CLARK believes that we have an undercurrent agreement that the Town was going to move heaven and earth to figure out a way to get funds, and the trustees at that time asked that we please keep them informed because they wanted to work with Town. Councilman CLARK stated that the Trustees, the Supervisor and himself walked out of the meeting feeling pretty confident that we all wanted to work together, but we must get something in writing.

A resident asked if NYMA had any other offers on the table. Captain Watts responded that the campus was not for sale, but that they have had a number of offers from a number of different groups, as the clock continues to wind down and if the decision is where the Board has to fulfill its fiduciary responsibilities and if they make the decision that the school is going to close, and if they decide to put it on the market they will look and see who has the best offer. The resident stated that NYMA has been very remiss in this situation, and should have come to us months ago, and is putting us in a precarious situation. Captain Watts stated that they are willing to work with the Town, but they have time limitations, the Board of Trustees must make the decision, not the alumni, and the clock is running out.

Pat Harding asked if there was a member from NYMA's Board of Trustees here tonight. Captain Watts explained that the gentleman who was supposed to be here tonight fell and hurt himself and wasn't able to be here. Pat asked if Captain Watts would be amenable to sit down with both counsel from the Town and NYMA and the Trustees to discuss the timeline. Captain Watts advised that they are more than agreeable to do that, he explained that they have sat down with the Supervisor, and the Councilman, their attorney has spoken with our attorney; we are very willing to work with them. Mr.

Harding also asked if NYMA would be willing to hold a meeting within the next three days. Captain Watts advised that he could not make that commitment as he is not a Trustee and only one of the eight Trustees is a local, all the rest are scattered over the U.S.

Peter Malone advised that he recently looked up on the internet and found that historic preservation was a qualifying event for eminent domain. He also asked if counsel had experience in eminent domain proceedings. Attorney GABA advised that only as far as things like easements and sidewalks as the Town hasn't had the occasion thus far.

Rhonda Kelly questioned that Captain Watts advised that the property is not for sale yet there are offers. Captain Watts advised that it has not been listed, but that they have received offers.

Sue Ryan asked if we are aware of what the other offers have been, or are we just taking a shot in the dark. Supervisor QUIGLEY advised that we have to have an appraisal done first and that is part of what this Resolution is all about.

A resident asked when the public will be notified of any changes. The Board advised that would happen most likely after they meet with NYMA.

Lorraine Bennet stated that she as a taxpayer feels that NYMA has a gun to her head and she thinks that it is about time that the meetings are held, that there is a majority of the Board present, that there are no more meetings with only two members and Randy and the Supervisor just said that you promised to come back and do whatever you could do, you two don't have the right to promise that. Councilman CLARK disagreed with her as they reported everything discussed at NYMA back to the Board.

Captain Watts stated that there is only one group that can represent NYMA and that is the Administration, which is himself, or a Trustee. The decision makers are the Trustees and they will try to be here, at least one of the members for this upcoming meeting. NYMA and the Town Board have had informal meetings and understand that there are limitations until the Town gets these Resolutions passed and the sooner they are passed, the sooner we can proceed to formal meetings and make things happen.

A resident asked about the NYMA 2.0 group and what amount they have raised. Captain Watts stated that they need 2.5 million by June 1st and have raised only \$32,000, and we need 7 million to move forward by June 30th. They along with the 2.0 group are still looking at other sources. Captain Watts stated that he hasn't given up yet but that the light is getting awfully dim.

A resident asked if NYMA could give a right of first refusal to the Town. Supervisor QUIGLEY advised that that will be determined during our negotiations with them.

Gina Tine wanted to know what happens on June 30th. Councilman CLARK advised that more than likely, some of their debt holders do not want to own a school, they will be anxious to know that there are negotiations going on, and would probably look favorably on that. Councilman CLARK further stated that even if we do not work through this, he did not perceive someone showing up on July 1st saying "you guys are out", it would take a period of time -- normally about 6months. Most debt holders are willing to wait to get their money if they see that NYMA is working hand in hand with the Town.

Lorraine Bennet advised that no one is looking at the fact that even if this goes to a bond vote, it could fail.

A resident asked if the sale of a not-for-profit goes to the Attorney General. Captain Watts responded that yes it does and it should be at market value or higher, if the sale is lower, then it has to get the approval of the Attorney General's Office or the State Supreme Court.

Captain Watts stated once again that everybody on their Board wants to stay in operations. The reason they are talking to the Town is because they see this as a viable way to see that happen. Captain Watts agreed that costs will be incurred by both the Town and NYMA and even though they can't afford it, they are going to spend that money if it can get them in the right direction. We will all work hard to get there.

There being no further public comments, this portion of the Special Meeting was closed at 9:05 P.M.

The Board went into Work Session at 9:11 P.M.

Motion to go into Closed Session at 10:00 P.M. was made by Councilwoman GREENE-KRAFFT, seconded by Councilman CLARK.

ROLL CALL VOTE: Councilpersons McGUINNESS, CLARK, GREENE-KRAFFT, Supervisor QUIGLEY – Aye, ABSENT: MAZZOCCA.

Motion to close Closed Session at 10:12 P.M. was made by Councilwoman GREENE-KRAFFT, seconded by Councilman CLARK.

ROLL CALL VOTE: Councilpersons McGUINNESS, CLARK, GREENE-KRAFFT, Supervisor QUIGLEY – Aye, ABSENT: MAZZOCCA.

Motion to discontinue the appeal on Legacy Ridge as the Town received the notice of a final extension date of June 25th 2010 was made by Councilman McGUINNESS, seconded by Councilwoman GREENE-KRAFFT.

ROLL CALL VOTE: Councilpersons McGUINNESS, CLARK, GREENE-KRAFFT, Supervisor QUIGLEY – Aye, ABSENT: MAZZOCCA

There being no further business to conduct, a motion to adjourn was made by Councilman McGUINNESS, seconded by Councilwoman GREENE-KRAFFT.

ROLL CALL VOTE: Councilpersons McGUINNESS, CLARK, GREENE-KRAFFT, Supervisor QUIGLEY – Aye, ABSENT: MAZZOCCA

Meeting adjourned at 10:15 P.M.

Renata McGee
Stenographer/Deputy Town Clerk

Elaine Tilford Schneer
Town Clerk