

The Gardiner Town Board met in Executive Session at 6:15 PM at the Gardiner Town Hall for the purposes of interviewing. A motion was made by Councilman Wiegand, seconded by Councilman Finger and carried to go into executive session. Supervisor Katz, Councilwoman Lemmon and Councilperson Kern were also present.

### **LEAVE EXECUTIVE SESSION AND ENTER INTO REGULAR SESSION**

At 6:55 PM the Town Board left executive session on motion of Councilman Finger, seconded by Councilperson Kern and carried. The Town Board then entered their regular meeting. There were approximately 12± audience members.

### **ANNOUNCEMENTS**

October 17 – 2<sup>nd</sup> Annual Art in Gardiner. Showing begins at 5 PM at the Firehouse, with the auction taking place at 6 PM at the Town Hall.

October 19 – Special Meeting of the Town Board for the 2010 Budget. 7 PM at the Town Hall.

October 24 – SVFD Chicken BBQ. Tickets can be obtained from Councilman Finger.

### **FINANCIAL REPORT**

Supervisor Katz presented the third quarter report on the finances of the Town. He has better news than in June where the Town was \$117,000 under budget. His calculations now estimate the Town will be \$55,000 under budget. Savings on the revenue side total approximately \$57,000 leave a break even situation.

### **PUBLIC HEARING CONTINUATION – ETHICS LAW**

The few changes agreed upon have been made and are non-substantive, therefore the law does not need to be re-advertised for a public hearing.

The Board began discussion with respect to who gets a copy of recommendations/decisions of the Ethics Board. A few suggestions were made on how to handle this. Finding of no action - the Boards policy or procedure could allow for the notification of the recommendation/decision to the complainant and the accused or they can elect to make the Ethics Board recommendation/decision a public manner as long as it is not an unwarranted invasion of personal privacy. Councilman Finger proposed the Town does not put this in the law, but requires the Ethics Board to write a standard operating procedure as part of their responsibilities.

Comments from the audience were as follows:

**John Habersberger** – without the information out in the public, could the Board possibly be allowing for rumors to make the situation worse than it really is.

**Marion Kells** – ask both parties to sign a release.

Board members believe that it is the duty of the Ethics Board to set up a procedure.

### **CLOSE PUBLIC HEARING**

On motion of Councilwoman Lemmon, seconded by Councilperson Kern and carried, the public hearing was closed at 8:40 PM.

### **ADOPTION OF LOCAL LAW # 9-2009 – CODE OF ETHICS**

On motion of Councilman Wiegand, seconded by Councilperson Kern Local Law #9-2009 Code of Ethics was adopted as written.

§26-1 **Title** This chapter shall be known and may be cited as the “Code of Ethics of the Town of Gardiner, New York”.

**26-2 Purposes** Pursuant to the provisions of §806 of the General Municipal Law, the Town Board of the Town of Gardiner recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. The Town Board of the Town of Gardiner also recognizes that the provisions of General Municipal Law §808 permit the establishment of a Board of Ethics to render advisory opinions to officers and employees of the Town on matters relating to General Municipal Law Article 18 and the Code of Ethics of the Town of Gardiner. The purposes of this Chapter are:

- a. to promulgate rules of ethical conduct for the officers and employees of the Town of Gardiner. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Gardiner. The rules of ethical conduct shall not conflict with, but shall be in addition to, any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees; and
- b. to establish the Board of Ethics of the Town of Gardiner, and to set forth the procedures to be followed by such Board of Ethics in the rendering of advisory opinions.

**26-3 Definitions** As used in this chapter, the following terms shall have the meanings indicated:

**Conflict of Interest:** The term “conflict of interest” shall include, but not be limited to, any action or omission which gives the appearance of a conflict between the interests of the Town and the performance of the official duties of a municipal officer, employee or consultant.

**Consultant:** A person, paid or unpaid, providing advice to and at the request of a municipal board, committee, department, commission or other agency and having expertise in the subject matter under consideration as a result of professional training, experience or education. The term shall include, but not be limited to, persons required by law to be licensed in order to render services related to the subject matter under consideration.

**Municipal Officer or Employee:** An officer or employee of the Town of Gardiner whether elected, appointed, paid or unpaid, whose duties include the rendering of services to the Town of Gardiner. The term shall include members of the Town Board and any administrative board, committee, department, commission or other agency of the Town. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer firefighter or civil defense volunteer.

**Personal Interest:** A direct or indirect pecuniary or material benefit accruing to a municipal officer or employee, whether as a result of a contract with the Town or otherwise. For the purposes of this chapter, a municipal officer or employee shall be deemed to have a personal interest in the contracts of:

- (i) a relative, except as to a contract of employment with the Town with regard to which the municipal officer or employee shall take no official position or vote;
- (ii) a firm, partnership, or association of which such municipal officer or employee is a member or managerial employee;
- (iii) a corporation of which such officer or employee is an officer, director or managerial employee;
- (iv) a corporation, limited liability company or other entity organized for business or charitable purposes of which the municipal officer or employee or a relative of the municipal officer or employee holds at least a 5% stockholder, membership, ownership or voting interest.

**Relative:** A spouse, domestic partner, child, stepchild, parent, sibling, step-sibling or legal guardian of any municipal officer or employee.

**Town:** The Town of Gardiner.

**26-4 Standards of Conduct** Every municipal officer or employee of the Town of Gardiner shall be subject to and abide by the following standards of conduct:

- a. **Gifts.** No municipal officer or employee shall directly or indirectly solicit or receive any gift or thing of value (never to exceed \$75), whether in the form of money, services, loan, travel, entertainment, hospitality, promise, tangible thing, or any other form, under circumstances in which it could be reasonably inferred, or under circumstances where it could be reasonably expected, that the gift was intended to influence him or her in the performance of his or her official duties or was intended as a

reward for any official action taken on his or her part. A donation received by a municipal officer or employee on behalf of the Town and directly applied to the general benefit of the Town shall not be deemed a prohibited gift.

b. Confidential Information. No municipal officer or employee shall disclose confidential information acquired as a result of his or her official capacity or in the course of official duties, except when the legitimate interest of the Town renders it appropriate to disclose such information. He or she shall not use such information to further his or her personal interest. This shall not be deemed to preclude disclosure compelled in the course of legal or administrative proceedings by lawful mandate, or in response to a valid request made pursuant to the Freedom of Information Law.

c. Prohibited Conflicts of Interest. No municipal officer or employee shall have a personal interest in any contract with the Town, provided that nothing in this chapter shall be construed to preclude the payment of lawful consideration and necessary expenses of any municipal officer or employee for services rendered in one or more positions of public employment, the holding of which is not prohibited by law, or the payment of lawful consideration for services rendered which do not constitute a conflict of interest as defined herein. A conflict of interest will be deemed to exist when a municipal officer or employee has a personal interest in any contract that may be subject to approval, oversight or other official action by a board, committee, agency, department or commission of which the municipal officer or employee is a member.

d. Investment in Conflict with Official Duties. No municipal officer or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction, which creates the appearance of a conflict or an actual conflict with his or her official duties.

e. Representation before one's own agency. No municipal officer or employee shall receive or enter into any agreement, express or implied, for compensation, direct or indirect, for services to be rendered in relation to any matter before any board, committee, agency, department or commission of the Town of which he or she is an officer, member or employee or of any board, committee, agency, department or commission over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

f. Disclosure of Interests in Contracts. To the extent known, if any municipal officer or employee has a potential or actual conflict of interest in any matter in which he or she encounters in the performance of his or her official Town duties, he or she shall make written disclosure of such conflict to the Town Clerk and all concerned parties as to the nature of such conflict, and the municipal officer or employee having such actual or potential conflict shall refrain from voting or otherwise acting in the matter so as to avoid an actual conflict or the appearance of such conflict. The Town Clerk shall promptly disseminate the disclosure to the members of any board, department, commission or other agency that has jurisdiction of the subject matter to which the disclosure shall relate.

g. Private Employment. No municipal officer or employee and no consultant shall, after the termination of services or employment with the Town, appear before any municipal board, committee, department, commission or other agency of the Town in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or which was under his or her active consideration. This shall not be deemed to prevent a consultant, officer or employee from providing testimony or information at the request of the municipal board, committee, agency, department or commission they formerly served to answer questions posed by such body.

h. Use of Position to obtain Preferential Treatment. No municipal officer, employee or consultant of the Town shall use or attempt to use his or her official position to secure any personal advantage or advantage for his or her relative that does not also inure equally to other citizens of the Town.

i. Discrimination. Discrimination by any municipal officer, employee or consultant on account of race, ethnicity, creed, gender, sexual orientation or political affiliation shall be prohibited.

**26.5 Personal Claims Not Prohibited** Nothing herein shall be deemed to bar or restrict the presentation or filing of any otherwise lawful claim, account, demand or legal action against the Town or any administrative board, committee, department, commission or other agency of the Town, on behalf of

himself/ herself or his/ her relatives arising out of personal injury or property damage, or to obtain any benefit authorized or permitted by law.

#### **26.6 Establishment of the Board of Ethics**

- a. The Board of Ethics of the Town is hereby established. From time to time the Town shall appropriate adequate funds for the maintenance of the Board of Ethics.
- b. The Board of Ethics shall consist of nine members, all of whom shall be appointed by the Town Board. At least one member of the Board of Ethics shall be a municipal officer or employee. All members of the Board of Ethics shall be residents of the Town. The Ethics Board shall be permitted to act on any matter as long as a quorum of five members is present at a duly called meeting.
- c. Of the initial members of the Board of Ethics, three shall be appointed for a term of one year, three shall be appointed for a term of three years, and all other members shall be appointed for a term of five years. Subsequently, all members shall be appointed for a term of five years. All membership terms shall be subject to reappointment at the discretion of the Town Board. Notwithstanding anything herein to the contrary, the term of a member who is an officer or employee of the Town shall terminate when the employment or term of office of such member shall end. This shall not preclude the reappointment of such member to the Board of Ethics by the Town Board.
- d. No member of the Board of Ethics shall be an officer of any political party or be employed as a lobbyist as to any matter pending before any board, agency, committee department or commission of the Town.
- e. The members of the Board of Ethics shall not receive any compensation for the performance of their official duties but shall be reimbursed for their reasonable and necessary expenses.
- f. The Town Attorney or other legal counsel designated by the Town Board shall provide such legal advice as may be reasonably required or requested by the Board of Ethics.

#### **26.7 Powers and Duties of the Board of Ethics** The Board of Ethics shall have the following powers and duties:

- a. To prescribe and promulgate rules and regulations governing its own organization and procedures in a manner consistent with the Municipal Code and Article 18 of the General Municipal Law, the Freedom of Information law, and the Open Meetings Law (Public Officers Law Articles 6 and 7). The rules and regulations shall include a requirement that the Board of Ethics meet at least once per year.
- b. Upon written request of a municipal officer or employee, to conduct investigations regarding the violation of this chapter or the provisions of General Municipal Law Article 18 and to render advisory opinions to the Town Board based upon such investigations. The Town Clerk shall maintain standardized forms for the receipt of ethics complaints and shall provide them upon request to any resident of the town desiring to file such a complaint. Any written ethics complaint received by the Town Clerk or any other municipal officer or employee shall be forwarded to the Board of Ethics for its consideration.
- c. All investigations shall be conducted in a manner consistent with principles of fundamental fairness to the accused. Until the issuance of its advisory opinion, all investigations by the Board of Ethics shall be conducted in a confidential manner.
- d. All persons accused of violating the provisions of this chapter or General Municipal Law Article 18 shall be given written notification of the complaint and the facts alleged in support of the complaint. All persons accused of violating the provisions of this chapter or General Municipal Law Article 18 shall be given an opportunity to appear before the Board of Ethics and be fully heard in his or her defense regarding the complaint.
- e. In its discretion, the Board of Ethics may refer a matter to the authority, person or body authorized by law to impose disciplinary action or to the District Attorney or other lawful prosecuting authority, if in the course of an investigation the Board of Ethics determines that such a referral is appropriate. If such a referral is made, the Board of Ethics may suspend its investigation or adjourn its hearing, as the case may be, pending a determination by such authority, person, body or prosecutor.

f. The advisory opinions issued by the Board of Ethics for the Gardiner Town Board are inter-agency communications, and as such are not subject to disclosure pursuant to the Freedom of Information Law. The final determination of the Town Board is a public record, and as such, with the exception of disclosure that would result in an unwarranted invasion of personal privacy, it shall be maintained and indexed by the Town Clerk.

g. The Board of Ethics may, but shall not be required to, recommend disciplinary action as a result of any the provisions of this chapter or General Municipal Law Article 18 having been violated.

**26.8 Penalties for Violations** Upon a finding that the provisions of this chapter or General Municipal Law Article 18 have been intentionally violated, the Town Board may suspend or remove the violator from office or employment, as the case may be, or impose fines or any other sanction as may be authorized by law.

**26.9 Supersession** This local law is intended to supersede the provisions of §808(2) of the General Municipal Law of the State of New York as enacted in 1964 and thereafter amended with respect to the persons who may file a complaint and request an advisory opinion of the Board of Ethics.

**26.10 Distribution of Code of Ethics** The Supervisor of the Town shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town within ten (10) days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his or her office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

### **APPROVAL OF PRIVATE ROAD NAME**

Resolution No. 122- Private Road – Spring Road – Offered by Supervisor Katz

WHEREAS, the Town Board has received a request to approve the name of a private road to be know as Spring Road, which said private road intersects a private road know as Lyons Creek Lane which in turn intersects with a public highway known as Lyons Road; and

WHEREAS, the proposed name has been reviewed and approved by the Ulster County Real Property Tax Service Agency, then

RESOLVED, in accordance with Resolution No. 32-1992, the Town Board hereby approves the name Spring Road for said private road.

Seconded by Councilperson Kern and carried.

### **SEQR REVIEW – SIDEWALKS PHASE II**

Councilwoman Lemmon reviewed with the Town Board the long form SEQR prepared for the sidewalk project phase II. She reviewed the sketch agreed upon with the NYS DOT. Board members had a few questions about the SEQR form and decided to vote on this in November.

### **GOLD FOX LIQUOR LICENSE RENEWAL APPLICATION**

Board members are in receipt of a letter of renewal for a liquor license for Gold Fox Restaurant. All members stated they are not opposed to this renewal and authorized the Town Clerk to send a letter to the liquor commission waiving the 30 day waiting period.

### **SUPERVISOR REPORT**

The Supervisor's report for September was approved as presented on motion of Councilwoman Lemmon, seconded by Councilperson Kern and carried.

### **CLAIMS**

Claims for September were approved for payment on motion of Councilwoman Lemmon, seconded by Councilperson Kern and carried. They are listed on Abstract #9 as follows: General Fund voucher #487-540 \$42,652.94; Highway Fund voucher #211-236 \$16,502.46; Sewer District #1 voucher #45-52 \$5,474.30; Capital Transfer Station voucher # 11-15 \$80,561.14; Library Fund voucher #142-149 \$1,289.13.

### **BUDGET TRANSFERS AND SUPPLEMENTAL APPROPRIATIONS**

**Resolution No. 123** – Budget Modification Supplemental Appropriation – Offered by Councilperson Kern Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for supplemental appropriations in the amount of \$9,150.58 in Acct No. 00.01.1440.463 Engineer/Sidewalks, \$9,150.58 in Acct. No. 00.4589 Rev. Fed. Transportation, \$3,554.75 in Acct No. 00.01.1420.468 CE Cell Tower and \$3,554.75 in Acct No. 00.2120 Attorney Cell Tower. Further Resolved, said monies to be taken from the Expected Revenue in the General Fund. Seconded by Councilman Wiegand and carried.

**Resolution No. 124** – Transfer within General Fund to Modify the Budget – Offered by Councilperson Kern Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for transfers in the amount of \$16,570.70 from Acct No. 00.9998 Unexpended Approp. Reserve to Acct No. 00.4589 Fed. Transportation (sidewalks), \$3,108.00 from Acct No. 00.9998 Unexpended Approp. Reserve to Acct No. 00.3589 NYS Transportation (sidewalks) and \$8,806.35 from Acct No. 00.9998 Unexpended Approp. Reserve to Acct No. 00.2120 Cell Tower. Seconded by Councilman Wiegand and carried.

**Resolution No. 125** – Supplemental Appropriation Library Fund – Offered by Councilperson Kern Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, Library Fund, is hereby amended to provide for supplemental appropriations in the amount of \$7,032.34 in Acct No. 19.09.9710.700 Debt Service Interest and 1,077.27 in Acct No. 19.06.7410.430 CE Office Supplies. Further Resolved, said monies to be taken from the Unexpended Balance in the Library Fund. Seconded by Councilman Wiegand and carried.

**Resolution No. 126** – Supplemental Appropriation Sewer Fund – Offered by Councilperson Kern Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, Sewer Fund, is hereby amended to provide for a supplemental appropriation in the amount of \$1,749.94 in Acct No. 03.07.8110.468 CE Repairs. Further Resolved, said monies to be taken from the Unexpended Balance in the General Fund. Seconded by Councilman Wiegand and carried.

**Resolution No. 127** – Transfer within Highway Fund – Offered by Councilperson Kern Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, Highway Fund, is hereby amended to provide for transfers in the amount of \$2,406.16 in Acct No. 01.04.5110.115 PS Quick to Acct No. 01.04.5110.116 PS MacEntee and \$640.64 from Acct No. 01.04.5110.115 PS Quick to Acct No. 01.04.5110.111 PS Working Foreman. Seconded by Councilman Wiegand and carried.

**Resolution No. 128** – Supplemental Appropriation General Fund – Offered by Councilperson Kern

Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for a supplemental appropriation in the amount of \$1,575.00 in Acct No. 00.06.7110.413 CE Repairs Parks.

Further Resolved, said monies to be taken from the Unexpended Balance in the Park Repair Reserve Fund. Seconded by Councilman Wiegand and carried.

**Resolution No. 129** – Supplemental Appropriation General Fund – Offered by Councilperson Kern

Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for supplemental appropriations in the amount of \$1,470.41 in Acct No. 00.01.1950.400 Assess Real Property and \$5.00 in Acct No. 00.02.3120.101 PS Public Safety.

Further Resolved, said monies to be taken from the Unexpended Balance in the General Fund.

Seconded by Councilman Wiegand and carried.

**Resolution No. 130** – Transfer within General Fund – Offered by Councilperson Kern

Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for transfers in the amount of \$247.00 from Acct No. 00.01.1220.403 Conference & Education Supervisor to Acct No. 00.01.1220.402 Supervisor Mileage, \$55.00 from Acct No. 00.01.1410.401 Town Clerk Misc. to Acct No. 00.01.1410.402 Town Clerk Mileage, \$350.00 from Acct No. 00.01.1620.401 CE Building Misc. to Acct No. 00.01.1620.413 CE General Repairs, \$25.61 from Acct No. 00.01.1670.401 CE Misc. Expenses to Acct No. 00.04.1670.423 CE Central Postage, \$272.40 from Acct No. 00.01.1680.401 CE Broadband to Acct No. 00.01.1680.421 CE Office Supplies and \$ 43.61 from Acct no. 00.02.3620.424 CE Building Dept Books to Acct No. 00.02.3620.421 CE Building Dept. Office Supplies.

Seconded by Councilman Wiegand and carried.

**Resolution No. 131** – Transfer within General Fund – Offered by Councilperson Kern

Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for transfers in the amount of \$135.99 from Acct No. 00.04.5010.402 CE S/H Mileage to Acct No. 00.04.5010.201 Equipment over \$500, \$187.20 from Acct No. 00.07.8160.415 CE Trailer Rental to Acct No. 00.07.8160.103 PS Station Asst. and \$155.00 from Acct No. 00.02.3120.401 CE Misc. Exp. to Acct No. 00.02.3120.101 PS Public Safety.

Seconded by Councilman Wiegand and carried.

**Resolution No. 132** – Transfer within General Fund – Offered by Councilperson Kern

Resolved, pursuant to Section 112, Town Law, the 2009 Annual Budget, General Fund, is hereby amended to provide for transfers in the amount of \$34.36 from Acct No. 00.04.5010.402 CE S/H Mileage to Acct No. 00.04.5010.401 Misc. Expense, \$35.00 from Acct No. 00.06.7310.420 CE Arts & Crafts to Acct No. 00.06.7310.401 CE Misc. Uniform, \$31.17 from Acct No. 00.06.7310.420 CE Arts & Crafts to Acct No. 00.06.7310.434 CE Phone and \$117.00 from Acct No. 00.07.8020.424 CE PB Books to Acct No. 00.07.8020.404 CE Engineer.

Seconded by Councilman Wiegand and carried.

**PRIVILEGE OF THE FLOOR**

**John Habersberger** – asked why the Town lost the cell tower suit. Supervisor Katz replied that the judge felt the Town did not meet all the criteria in the Town zoning. There were approximately eleven (11) procedural items.

**Pam O'Dell** – when will the decision on the Planning Board vacancy be announced. Supervisor Katz stated at the November 5 meeting

**Henry Tortora** – how much will the Town be raising the taxes.

**Paul Colucci** – commented that a personal attack does not help any situation.

**Rich Koenig** – stated he believes as the budget is right now the increase will be approximately 16%.

**John Habersberger** – asked what the rationale is not establishing a sidewalk district.

**ADJOURNMENT**

On motion of Councilperson Kern, seconded by Councilwoman Lemmon and carried, the meeting was adjourned at 8:15 PM.

Respectfully submitted,

Michelle L. Mosher  
Town Clerk