

**TOWN OF SOUTHEAST  
John J. Dunford Civic Center  
1360 Route 22, Brewster, New York 10509  
September 18, 2008  
Regular Meeting - 7:30 PM**

**Notation of Exits  
Pledge of Allegiance**

**CALL FOR THE ORDER OF THE DAY – Councilman Johnson**

Supervisor Rights made a motion to open the meeting and Councilman Yee seconded.  
All in favor.

Present: Supervisor Rights  
Councilman Johnson  
Councilman Honeck  
Councilman Gross  
Councilman Yee

Also: Town Clerk Mazzei

And: approximately 28 persons

**PUBLIC HEARING - WESTCHESTER TRACTOR SPECIAL PERMIT**

Supervisor Rights made a motion to open the public hearing and Councilman Honeck seconds. All in favor.

Terri Hahn from LADA and Craig Baumgartner, the attorney for the project. This is for an amendment from the previous special permit. In 2005 Westchester Tractor received a site plan approval and a special permit to occupy the site. This permit did not allow them to have outside storage. They assemble, sell and lease large scale equipment to municipalities and large construction industries. The area they would like is over 20, 800 feet. The Planning Board in 2007 supported this application. Councilman Johnson stated the he, councilman Honeck and Councilman Gross visited the site at different times and it is not visible to residents. Different surfaces are for areas to store the vehicles and area to view the equipment. This is located in an industrial park. Lynne Eckardt spoke on behalf of Concerned Residents of Southeast. She as told the verbiage was submitted as part of the application. Westchester Tractor was sited for outside storage. Most of the original landscaping plan was installed. Ms. Eckardt stated the project is visible from Route 312 and worried that other projects will not be given the same Rights as this project. Thinks there need to have consistency in the laws. Mr. Baumgartner said that outside storage is permitted in this area. Mr. Apple, owner, said that they are proud of the site and how it looks. Dan Barton mentioned that originally it was stated often that nothing would be stored outside. Ann Fanizzi from Open spaces feels it is time to look at the zoning Code. She said special permits are becoming the rule not the exception. Originally Terravest was an office park. Mr. Bock asked if the equipment would be visible and the answer was no. Mr. Lepler said that originally park was to be for light manufacturing and office. Ms. Eckardt mentioned that was also additional outside storage. Councilman Gross said that this is a very isolated site and it is very common to ask for special permits. Rick O'Rourke spoke of permitted uses and said the legislation allows for this. As a resident of the town, he said he like successful business in the town. Ms. Eckardt said that this was extended without permission.

Councilman Johnson made a motion to close the public hearing but with a 10 day comment period. Councilman Gross seconds and all in favor.

**PUBLIC HEARING – TEMPORARY TOWN ADMINISTRATOR**

Councilman Johnson made a motion to open the public hearing and Councilman Johnson seconded. All in favor.

Councilman Johnson read a proposed local law. This law would allow a temporary administrator if the Supervisor becomes incapacitated or on vacation, and for only that time period. Councilman Yee wants a flow of government but feel this does no make sense and thinks instead they should reinstate the Deputy Supervisor. Supervisor Rights also was not in favor of this position. Councilman gross feels this leads to a line of succession and feels this position satisfies the definition of what Mr. Rights and Mr. Yee want. Mr. Yee feels the chain of command is flawed. Mr. Gross said it has to be an elected official and voted on by a majority of the board. Mr. Johnson corrected the statement to say it could be anyone in the town but the intent is to appoint an elected official. Supervisor Rights said this is an attempt to disable the community. Councilman Honeck said if there are any positive comments he feels it would be well taken. Mr. Bock said wonders why the old board eliminated it; fix it. Ms. Eckardt said this position has no fiscal impact. She suggested that it be an elected official. Mr. Johnson said “elected official” could be added. Mr. Rights said he feels the law is flawed. Ms. Fanizzi questioned why it was eliminated originally and need to look at the position of Deputy Supervisor. Mr. Yee said the Deputy supervisor needs to work hand in hand with the supervisor. Rick O’Rourke said no taxpayer wants litigation and to be careful. Mr. Gross said the Deputy Supervisor is on a need to need basis. Catherine Dwyer said what ever you call the position, the town need to have someone here. We did not worry about it as much regarding Mr. Dunford because he was here everyday. She said that the supervisor knows what happened over the last 13 months, and the town needs to have someone in place. Paula Domain said the position to be put in place.

Councilman Honeck made a motion to leave thee public hearing open and Councilman Gross seconded. All in favor.

**REGULAR MEETING**

Councilman Honeck made a motion to open the Regular Meeting and supervisor Rights seconds. All in favor.

Supervisor Rights made a motion to waive the reading of the correspondence and Councilman Honeck seconded. All in favor.

**CORRESPONDENCE**

Made a motion to  
Correspondence Received

1. Acord Certificate of Liability Re: American Petroleum Equipment & Construction Co Inc
2. Cancellation of Certificate of Workers Compensation Re: JJ Sisca
3. Cancellation of Certificate of Workers Compensation Re: John W Goodman
4. Cancellation of Certificate of Workers Compensation Re: Benway Inc
5. Blackberry Hills Sewer District Certification & Disbursement request
6. Blackberry Hills WWTP Change Order
7. NYS Dept of Transportation Re: Restriction of Highway Contract D260620
8. NYS Dept of Transportation Re: Removal of Restriction of Highway Contract D260304
9. Lakeview Plaza to Michael Levine Re: Letter Dated 8/21/2008 regarding Wings Over Water & Creative Kids tenant spaces
10. American Legion to Town Board Members Re: Release of American Legion Funds
11. American Legion to Michael Rights Re: Donation for Flags
12. Mary Alice Shallo to Town Board Members Re: Historical Home –Request for Tax Exemption

13. Putman County Dept of Highways & Facilities Re: Bridge Replacement over East Branch In the Town of Southeast
14. Land Planners to Town Supervisor Re: The Elks Lodge
15. Maria Natell to Michael Rights Re: Dog Impound Charges
16. Cancellation of Workers Compensation Ins Re: American Custom Builders LLC
17. Planning Dept to Insite Engineering Re: Stateline Retail Center Site Plan
18. PC Office of the Aging to Michael Rights Re: Senior Citizen Picnic on 9/5/2008
19. Hogan & Rossi To Town Board Re: Ins of Special Permit & Wetland Permit & approval of Recommendations of the Architectural Review Board
20. Brewster/Carmel Garden Club to Michael Rights Re: dedication of Blue Star Memorial By-Marker On 10/5/2008
21. Gelardi & Randazzo Re: Resume
22. Notice of Blasting Re: 172 Old Milltown Rd, 8/26/2008
23. Special Districts to Town Board Re: Blackberry Special Park District Design Cost Estimate
24. Eveready Diner to Town Board Re: Liquor License
25. Chazen Company to Michael Rights Re: Blackberry Hill WWTP
26. Centennial Golf Club Re: Notice of Petition Against The Assessor of The Town of Southeast & The Board of Assessment Review
27. Comcast to Town Supervisor Re: Franchise Fee Payment
28. Jacobson to The Town of Southeast Planning Board Re: Dykemans's Corporate Park Rte 312 Bond Estimate
29. Jacobson to The Town of Southeast Planning Board Re: Southeast Professional Park Rte 312 Preliminary Site Plan Review
30. Jacobson To the Town of Southeast Planning Board Re: Carvalho Property, Danbury Rd Sketch Plan Review
31. Jacobson To The Town of Southeast Planning Board Re: Strazza Subdivision Preliminary Review
32. Jacobson To The Town of Southeast Planning Board Re: Drewville Reality Inc Continued Review
33. Jacobson To The Town of Southeast Planning Board Re: Ace Endico Request for Release Of Performance Bond
34. Jacobson To The Town of Southeast Planning Board Re: New Cingular Wireless Rte 22 Tower Extension & Co-Location
35. Jacobson To The Town of Southeast Planning Board Re: R.D. Berco Office Building Preliminary Site Plan Review
36. Jacobson To The Town of Southeast Planning Board Re: Arborscape Storage Shed
37. Putnam County To Town of Southeast Re: Building Officials Consortium Meeting Postponed until 9/22/08
38. Town of Southeast Planning Dept To Architectural Review Board Re: Dunmore Corp Amended Site Plan
39. Town of Southeast Planning Board To The Town Board Re: Release of Performance Bond for Route 6 Business Plaza
40. **MEMOS:**
  - Southeast Rec to Town Clerk Re: Monthly Revenue Report
  - Rec Dept To Supevisor, Town Clerk, Town Board Re: Ragamuffin Parade 10/26/08 at 2:00 PM
  - Town Clerk Mazzei to Supervisor Rights Re: Letter by Councilman Johnson, Honeck, & Gross
41. **E-MAILS:**
  - To R. Mazzei from R Gross Re: Add items to the agenda
  - To R. Mazzei from P. Johnson Re: Add items to the agenda
  - To P. Boyle from P. Johnson Re: Peach Lake Phase 1B Archaeological Survey
  - To R. Mazzei from H. Lepler Re: Emailing Society of Wetland Scientists-Requirements
  - To P. Johnson, D. Cuomo, and Mike Fila from Thomas Fenton Re: Welfare Rd Ponds
  - To Supervisor Rights & The Town Board from Levon

Bedrosian Re: Volunteer Park Vandalism

- To P. Johnson from M. Fila Re: Drainage Districts
- To P. Johnson from T. Fenton Re: Drainage Districts
- To P. Johnson from T. Fenton Re: Out Door Seasonal Pool

**42.FOILS:**

- To Building Dept Re: File for 1430 Route 22, Brewster
- To Town Clerk Re: Civil Defense Record info
- To Building Dept Re: Original Site Plans and codes for Mall/ Plaza At 100 Independence Way
- To Building Dept Re: Blank building permit
- To Building Dept Re: Copy of C of O for 14 Pleasant Dr
- To Planning Dept Re: Approved & As Built Site Plan & any and all Planning Board Approvals regarding Lakeview Plaza
- To The Assessors Office Re: Name & Addresses of all Southeast Residents who qualify as Veterans

**Correspondence Sent**

1. Town of Southeast Building Dept. To Mr. Joseph Sisca Jr. Re: Wings Over Water & Creative Kids Tenant Spaces
2. Michael Rights to Mr. Randall J Fleischer Re: Town of Southeast 2009 Parking Management Plan
3. Michael Rights to K.C. Anderson Re: Gold Lot for Founders Day

**VOUCHERS**

Councilman Honeck made a motion to approve the voucher list for \$1,073,891.36. Councilman Gross seconds and all in favor except Mr. Yee who abstained (he stated it was for no reason)

**BUDGET TRANSFERS**

Councilman Honeck made a motion to approve the budget transfers (listed at the end of the minutes) Supervisor Rights seconded and all in favor.

**MEETINGS**

All meetings are held at 1360 Route 22, Brewster, NY at 7:30 pm unless otherwise noted. Councilman Honeck seconds. All in favor, except Councilman Yee.

September 24, 2008 – Joint Meeting with the Village of Brewster

7:00 pm - 67 Main Street

October 2, 2008 – Worksession

October 9, 2008 – Worksession

October 23, 2008 – Regular Meeting

Public Hearing – Sound Barriers

Public Hearing – Architectural Review Legislation change

**RESOLUTION #51/08 - SPECIAL PERMITS - 12 Old Route 6**

INTRODUCED BY: Councilman Honeck

SECONDED BY: Supervisor Rights

**WHEREAS**, Dean Abatemarco and Lisa Aurello (“Applicant”), owner of premises located on 12 Old Route 6, Tax Map No. 55.12-1-12 (the “Subject Premises”) has made application to this Town Board for a Special Permit to allow the use of the first (ground) floor of an existing structure located on the Subject Premises to be used for retail purposes; and

**WHEREAS**, the Subject Premises are located in an GC-1 zone; and

**WHEREAS**, retail use is only permitted in a GC-1 Zone upon the grant of a Special Permit by the Town Board; and

**WHEREAS**, the Town Board is in receipt of a report and recommendation from the Southeast Planning Board wherein the Planning Board has recommended the grant of the Special Permit and has found the proposal of Dean Abatemarco and Lisa Aurello to be in compliance with all applicable general and special standards of Article X of Chapter 138 of the Town Code; and

**WHEREAS**, the Planning Board, as Lead Agency for purposes of State Environmental Quality Review Act (“SEQRA”) adopted a Negative Declaration, thereby determining that the project is not likely to have a significant effect on the environment and, thereby, concluded review under SEQRA; and

**WHEREAS**, a duly noticed public hearing was held by the Town Board on August 21, 2008 in connection with this application and all interested parties have been given an adequate opportunity to be heard in this regard,

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Town Board of the Town of Southeast hereby makes the following findings of fact in connection with the instant application:

1. The proposed use is in such location and is a size and character that it will be in harmony with the appropriate and orderly development of the surrounding district and will not be detrimental to the immediate site or adjacent properties;
2. The location and size of the proposed use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout, and its relation to access streets will be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous;
3. The proposed exterior appearance of the building will enhance and encourage the development and use of adjacent land and buildings; and
4. The proposed use will not require such additional public facilities or services or create fiscal burdens upon the Town greater than those which characterize uses permitted as of right.

**AND BE IT FURTHER**

**RESOLVED**, that based upon the foregoing findings, the Town Board of the Town of Southeast hereby grants a Special Use Permit to Dean Abatemarco and Lisa Aurello in connection with the Subject Premises in accordance with the Statement of Use prepared and submitted to the Planning Board in connection with this Project Development Plan application, on condition that the applicant shall construct and operate the facility in compliance with all conditions set forth in Article X of the Zoning Code; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized and directed to forward a certified copy of this resolution to the Applicant and the Secretary of the Town of Southeast Planning Board forthwith.

Upon Roll Call Vote:

Councilman Yee     aye  
Councilman Gross   aye  
Councilman Honeck  aye  
Councilman Johnson aye

Supervisor Rights aye

VOTE: carried by a vote of 5 in favor, 0 against.

**RESOLUTION #51/08 - WETLANDS PERMIT -BOROWICK SUBDIVISION**

INTRODUCED BY: Councilman Johnson

SECONDED BY: Councilman Gross

**WHEREAS**, the Town of Southeast Wetlands Inspector issued a report and recommendation in connection with the subdivision application of Howard Borowick which seeks to merge and re-subdivide certain residential premises located at 180 Foggintown Road in the Town of Southeast, Putnam County, New York; and

**WHEREAS**, the Town Board finds that there is no reason to upset the findings and recommendation of the Planning Board and Wetlands Inspector in connection with said application,

**NOW, THEREFORE, BE IT**

**RESOLVED**, that after reviewing the maps, plans and submissions of the Applicant, together with the Report and Recommendation of the Wetlands Inspector as transmitted by the Planning Board to the Town Board and which is incorporated herein by reference, the Town Board of the Town of Southeast hereby **GRANTS** a permit to allow a portion of the proposed activity to occur within the wetland buffer area as shown on the proposed site plan on file with the Planning Board.

Upon Roll Call Vote:

Councilman Yee aye  
Councilman Gross aye  
Councilman Honeck aye  
Councilman Johnson aye  
Supervisor Rights aye

VOTE: carried by a vote of 5 in favor, 0 against.

**RESOLUTION #52/08 ACE ENDICO – SITE PLAN RELEASE OF PERFORMANCE BOND**

INTRODUCED BY: Councilman yee

SECONDED BY: Councilman Honeck

**WHEREAS**, the Town Board of the Town of Southeast is in receipt of a report and recommendation from the Town Engineer with respect to the release of Performance Bond for Ace Endico – Site Plan, located on International Boulevard, Town of Southeast; and

**WHEREAS**, such report recommends the release of the balance of the performance bond held in connection with this project.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the remaining performance bond amount for the Ace Endico – Site Plan is hereby released and the Town Clerk is hereby authorized to return any and all original bonds, deposits, letters of credit or other indicia of security posted in connection with this project.

Upon Roll Call Vote:

Councilman Yee        aye  
Councilman Gross     aye  
Councilman Honeck   aye  
Councilman Johnson   aye  
Supervisor Rights    aye

VOTE: carried by a vote of 5 in favor, 0 against.

**VOLUNTEER PARK – PLAYGROUND EQUIPMENT**

Councilman Honeck made a motion to accept the proposal from Miracle for \$24,444.00. Supervisor Rights seconded and all in favor.

**VOLUNTEER PARK - TRACTOR**

Councilman Johnson made a motion to authorize the purchase of a loader tractor as shown in the memo of September 11, 2008. FOR \$12,783.00; Councilman Honeck seconded and all in favor.

**OFFICE OF TEMPORARY TOWN ADMINISTRATOR – DEFERRED**

**APPOINTING TEMPORARY TOWN ADMINISTRATOR – DEFERRED**

**RESOLUTION # /08 ESTABLISHING USE PROTOCOL AND PROCEDURE FOR TOWN-OWNED FACILITIES – deferred**

**RESOLUTION #//08 – REFERRAL TO BOARD OF ETHICS**

INTRODUCED BY: Councilman Johnson

SECONDED BY: Councilman Gross

**WHEREAS**, on or about August 29, 2008, Supervisor Rights and Councilman Dwight Yee distributed a DVD to certain Republicans within the Town of Southeast as part of their campaign to take control of the Southeast Republican Town Committee and that such DVD was filmed in part, on the third floor of 67 Main Street, Brewster, New York. It is evident that a camera crew, including lighting and sound, as well as other unauthorized personnel were involved in the filming of political commercials using Town electricity and facilities for private purposes.

**WHEREAS**, Supervisor Rights and Councilman Yee admit to using Town Facilities and claim that as elected officials, that they are entitled to use Town Facilities for filming political commercials.

**WHEREAS**, Article 4 § 73-b. of the Public Officers Law, entitled – “POWERS AND DUTIES OF PUBLIC OFFICERS,” states that: “Notwithstanding any other provision of law to the contrary, (a) no elected government official or candidate for

elected local, state or federal office shall knowingly appear in any advertisement or promotion, including public or community service announcements, published or broadcast through any print or electronic media (including television, radio and internet) by any private or commercial entity or any other entity that publishes such advertisement for a fee, if the advertisement or promotion is paid for or produced in whole or in part with funds of the state, a political subdivision thereof or a public authority. (b) No person shall knowingly use the funds of the state, a political subdivision thereof or public authority to pay for or produce, in whole or in part, any advertisement or promotion that is prohibited by paragraph (a) of this subdivision. This prohibition shall not apply to otherwise lawful expenditures of public campaign funds specifically provided for under state, federal or local law. 3. Any person who violates the provisions of this section shall be liable for a civil penalty of not less than one thousand dollars nor more than five thousand dollars. The penalties prescribed by this subdivision may be recovered in a civil action brought by the attorney general.

**WHEREAS,** in an **Opinion of the State Comptroller which states that** Article VIII, §1 of the State Constitution “. . . prohibits counties, cities, towns, villages and school districts from making gifts or loans of ‘any money or property to or in aid of any individual, or private corporation or association.’ These provisions are intended to curb raids on the public purse for the benefit of favored individuals or enterprises furnishing no corresponding public benefit or consideration (Matter of Mahon v Board of Education of the City of New York, 171 NY 263; Teachers' Ass'n Central High School District No. 3 v Board of Education Central High School District No. 3, Nassau County, 34 AD2d 351, 312 NYS2d 252; see also 1986 Opns St Comp No. 86-70, p 109). Payments to an individual or private entity, even if in furtherance of a public purpose, will violate the gift and loan provision of the Constitution unless there is some legal obligation for a municipality to make such payments to the private person or entity (Antonopoulou v Beame, 32 NY2d 126, 343 NYS2d 346). This legal obligation may be statutory or may be pursuant to an appropriate contractual obligation undertaken in good faith (see, Piro v Bowen, 76 AD2d 392, 430 NYS2d 847, lv to app den, 52 NY2d 702, 437 NYS2d 1025). Therefore, even if a payment to a private individual or entity is deemed to further a public purpose, such as ensuring the availability of sites for landfills, it may not be accomplished by a gift made in violation of article VIII, §1 of the State Constitution.”

**NOW, THEREFORE, BE IT**

**RESOLVED,** that the Town Board of the Town of Southeast hereby requests that the Southeast Board of Ethics render an advisory opinion to the Southeast Town Board in accordance with Chapter § 18-6 of the Code of the Town of Southeast entitled “Local Board of Ethics” as to whether there is probable cause for charges to be made against Supervisor Michael Rights and Councilman Yee.

Upon Roll Call Vote:

Councilman Yee      nay  
Councilman Gross    aye  
Councilman Honeck   aye  
Councilman Johnson   aye  
Supervisor Rights    nay

VOTE: carried by a vote of 3 in favor, 2 against.

**REVISED PLANNING BOARD FEE SCHEDULE** – deferred

**REQUEST FOR PROPOSAL – FOR AUDITED VOUCHERS**

Council Johnson made a motion to have RFP for a full blown audit of the financial, a Town Board approved RFP, input on what firms the RFP is sent to, and that it covers 2007 and 2008, and not to exceed \$25,000. Councilman Honeck seconded and vote carried by 3 ayes and 2 nays (Rights and Yee).

**SECURITY**

Councilman Johnson is concerned that the supervisor is the last one to leave and he should arrange to leave after his cameramen crew leaves.

**COMPUTERS**

It was discussed that computer prices should be check against state bids.

**VIDEO TAPING OF WORKSESSION-** Worksession item

**GRIFFEN CONSTRUCTION** – Councilman Yee to provide a copy of vouchers.

**NEW BUSINESS**

Defensive Driving Course – Cost for mandated employees will be paid by the town; all other will be charged d\$25.00. Vote was 4 ayes, 1 nay (Johnson)

Councilman Yee made a motion to close the meeting at 11:15; Supervisor Rights seconded. All in favor.

Respectfully submitted,

Ruth Argo Mazzei  
Southeast Town Clerk