

**TOWN OF CHATHAM TOWN BOARD MEETING  
MAY 18, 2006**

The regular meeting of the Town of Chatham, Town Board was held on Thursday May 18, 2006 at 7:00 pm at the town hall. Present were: Jesse DeGroot – Supervisor, BethAnn Rippel – Councilman, Bob Balcom – Councilman, Don Hegeman – Councilman, Jean Rohde – Councilman, Tal Rappleyea - Town Attorney, Carol Gregg – Town Clerk, Joe Rickert – Highway Supt., several members of the Tri-Village Fire Co. and others.

Supervisor DeGroot opened the meeting and the pledge to the flag was led by Councilman Hegeman.

Public Hearing for Local Law #3 for the (indemnification of town officials) was opened at 7:00 pm. There were no comments and hearing was closed at 7:03 pm.

**CORRESPONDANCE**

**NYSDEC** concerning LaFarge tire burning permit.

**ALEXANDER HARRINGTON** letter requesting that the Town Board consider their requests before it makes its immunity determination for the Tri-Village Fire Co. request to build a new firehouse.

**COL. CTY. PLANNING BOARD** notifying the Town Board that they recommend a Variance is granted for the Tri-Village Fire House.

**PUBLIC COMMENT**

**ALBERT ROSS** a member of the Tri-Village Fire Co. would like to set some things straight concerning the advertisement in the Chatham Courier, which was paid for by the Coalition of Concerned Citizens of Chatham, a group that opposes construction of the new centralized firehouse on land which is owned by the Old Chatham Tennis Club. Mr. Ross made the following statements:

1. Has the Town Board received any letter from the Tri-Village requesting over a 1 million increase in taxes, as was stated in the ad? The answer is no.
2. The Fire Co. is still negotiating the price of the land. He stated that the cost will not be anywhere near \$50,000.00.
3. The Tri-Village has always used County Rt. 13 to travel on and they have not ever found that it is unsafe.
4. The Tri-Village will have trees donated and will not be spending \$150,000.00 on shrubs.
5. The Tri-Village has never forced the Town Board to pay them anything.
6. The Malden Bridge fire station is part of Tri-Village Fire Co. and will remain open.

**REPORTS**

**HIGHWAY** Joe Rickert thanked Tammy Shaw for coming in to work on Saturdays during Town Clean Up week. His report is on file.

**JUSTICE** report is on file.

**COMP PLAN** Mike Hart reported that the Land Use committee is working on the strategies language.

**Res. #76-06** to establish contract for Court Officer.

Supervisor DeGroot offered Res. #76 and moved its adoption to establish a contract for the Town Court Officer at a rate of pay of \$15.50/Hr. Councilman Rohde seconded the motion.

Vote; ayes, all present

Nays, none and resolution was adopted.

**Res. #77-06** to authorize purchase of dock and sheds for Crellin Park.

Supervisor DeGroot offered Res. #77 and moved its adoption to authorize the Program Director of Crellin Park to purchase (2) Two Sheds from Dunn Builders at a price of \$1121.94 and (1) Dock from Tony's Berkshire Boats for \$1780.00. Councilman Balcom.

Vote; ayes, all present

Nays, none and resolution was adopted.

**Res. #78-06** to adopt Local Law #3(Indemnification of Town Officials).

Supervisor Ripple offered Res. #78 and moved its adoption to adopt Local Law #3 (Indemnification of Town Officials). Copy is on file. Councilman Rohde seconded the motion.

Vote; ayes, all present

Nays, none and resolution was adopted.

**OLD BUSINESS**

**COUNCILMAN BALCOM** reported that the engineer will have something for us to review at our next Town Board meeting concerning Mirror Lake restoration. A cost estimate to remedy the flooding problem is being worked on. He said that the dredging of the pond will be very expensive.

**Res. #79-06** to approve minutes.

Councilman Rohde offered Res. #79 and moved its adoption to accept the minutes of April 20, 2006 as written. Councilman Hegeman seconded the motion.

Vote; ayes, all present

Nays, none and resolution was adopted.

**Res. #80-06** to remove Highway computer from inventory.

Supervisor DeGroot offered Res. 80 to remove Highway Computer, inventory ID#173-176, from highway inventory and sell as surplus equipment. Councilman Ripple seconded the motion.

Vote; ayes, all present

Nays, none and resolution was adopted.

Public Hearing for the Tri-Village Fire Co. application was opened at 7:30 p.m. Town Attorney Tal Rappleyea explained the reason for this consideration for immunity. They will still have to go thru the SEQR process and they will also have to fulfill any requirements that the state requires.

**STAN KOLOSKI** a member of the Board of Directors of the Tri-Village Fire Co. spoke first and then asked Jack Lanphear to point out, on a map, the boundary lines for the Tri-Village Fire District. Stanley stated that the Fire Co. has been existence for 60 years. Most of the members of the Fire Co. come from the Chatham Center area. The rescue truck is now housed in Malden Bridge and the Fire Co. would like that to be moved to the new firehouse first, so that it will be centrally located. He said that the conditions at the

current fire house are in poor condition. **JACK KING** stated that every time they go out on a call they use Cty. Rt. 13. The Fire Co. has not had any problems with safety issues on this road. **AL ROSS** stated that all vehicles have to travel at the posted speed limit. If the Fire Co. ever wishes to sell the property they will give the Tennis Court owner first refusal. The hearing was closed at 8:00 pm.

**RES. #81-06** applicability of SEQRA to “Balancing Test” Tri-Village Fire Co. applications.

Supervisor DeGrootd offered Res. #81 and moved its adoption that

**WHEREAS**, the TriVillage Fire Company (the “Applicant”) has requested that the Town Board of the Town Chatham make a determination by way of a “balancing test” with regard to whether the Applicant shall be exempt from the applicability of the Town’s land use laws, pursuant to certain case law in the State of New York, in relation to its proposal to purchase a portion of a parcel of land, following a subdivision, from the Old Chatham Tennis Club located on Route 13, Chatham, NY and construct a fire house thereon; and

**WHEREAS**, the New York State Environmental Quality Review Act (SEQRA), 6 NYCRR Part 617 requires a review of “actions” as that term is defined therein, and

**WHEREAS**, 6 NYCRR § 617.2 (b) defines an action as:

“(b) Actions include: (1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that: (i) are directly undertaken by an agency; or (ii) involve funding by an agency; or (iii) require one or more new or modified approvals from an agency or agencies; (2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions; (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and (4) any combinations of the above; and

**WHEREAS**, 6 NYCRR §617.5 (c) sets forth particular actions which are “Type II” actions and thus are not subject to the environmental review; and in particular subparagraph (31) thereof states that “...interpreting an existing code, rule or regulation” is not subject to review; and

**WHEREAS**, following a discussion and analysis of the aforementioned issues and testimony, Supervisor DeGrootd offered a motion which was seconded by Councilperson Beth Ann Ripple and carried

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Chatham hereby finds that the interpretation and analysis of the balancing test required under the relevant case law is an interpretation of an existing code, rule or regulation and as such is not subject to an environmental review under SEQRA; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is directed to file this Resolution in the appropriate index within five (5) business days.

Councilman Balcom seconded the motion.

	<u>Aye</u>	<u>Nay</u>
Jesse DeGrootd, Supervisor	<u>X</u>	_____
Beth Ann Ripple	<u>X</u>	_____
Donald Hegeman	<u>X</u>	_____
Jean Rhode	<u>X</u>	_____
Robert Balcom	<u>X</u>	_____

Unanimous vote of 5 to 0. The interpretation of the relevant case law and determination of applicability of land use regulation upon the Tri Village Fire Company for its application(s) for a minor subdivision, area variance and future site plan review, is hereby deemed to be a Type II and thus is not subject to an environmental review.

**RES. #82** to exempt Tri-Village Fire Co. from Town Land Use Laws.

Supervisor DeGrootd offered Res. #82 and moved its adoption that

**WHEREAS**, the TriVillage Fire Company (the “Applicant”) has requested that the Town Board of the Town Chatham make a determination with regard to whether it shall be exempt from the applicability of the Town’s land use laws in relation to its proposal to purchase a portion of a parcel of land, following a subdivision, from the Old Chatham Tennis Club located on Route 13, Chatham, NY and construct a fire house thereon; and

**WHEREAS**, the Town Board recognizes that there is significant case law on point, with regard to the exemption of such a project including In the Matter of the County of Monroe, 72 NY2d 338 (1988), which held that a balancing test must be performed to determine whether a project of a municipality or agency thereof, is exempt from the local land use regulation weighing the following factors: 1) Legislative intent; 2) Nature and scope of the instrumentality seeking immunity; 3) The kind of function or land use involved; 4) The extent of the public interest to be served; 5) The effect local land use regulation would have on the enterprise; 6) Impact on legitimate local interests; 7) Alternative locations for the facility in less restrictive zoning areas; 8) Alternative methods of providing the needed improvement; 9) Intergovernmental participation in the project development process; and 10) Opportunity of the public and others to be heard; and the Nanuet Fire Engine Co. No. 1, Inc. v. Amster, 177 Misc. 2d 296 (Rockland County S. Ct., 1998) wherein the Court determined that the construction of fire houses are municipal projects and must undergo the County of Monroe “balancing test” to determine whether such action is exempt from local land use regulation; and

**WHEREAS**, the Applicant is a not-for-profit corporation duly organized under the laws of the State of New York and is under contract with the Town of Chatham to provide fire and emergency protection to a large (nearly two-thirds) are of the Town and has been so for approximately 60 years; and

**WHEREAS**, specifically the project includes a proposal to subdivide approximately 4.9 acres of land from an existing 17.41 acre parcel located in a Business Zone, as that term is defined in the Town of Chatham Code Section 180-15, on which a tennis club is currently located; and

**WHEREAS**, the project then contemplates the construction of a three-bay firehouse with wash areas/bathrooms, sleeping or rest quarters, an office and a meeting hall; and

**WHEREAS**, one of the permitted uses in the Business Zone is a “public facility”, and

**WHEREAS**, the Town caused a notice to be published in the official newspaper of the Town notifying the public of the public hearing on the issues herein and allowed the public an opportunity to be heard and there being testimony from several members of the public in favor of the project and no opposition voiced either against the project or against the granting of an exemption pursuant to the County of Monroe and Nanuet cases, and

**WHEREAS**, following a discussion and analysis of the aforementioned issues and testimony, Supervisor DeGroot offered a motion which was seconded by Councilperson Beth Ann Ripple and carried:

**NOW, THEREFORE, BE IT RESOLVED**, that the Board finds that the Legislative intent as it relates to the within matter is found in the Comprehensive Plan of 1971 and the Town Code of the Town of Chatham. The Comprehensive Plan acknowledges the existence of the Tri-Village Fire Company and the excellent service it provides to a vast area of the Town and states that

“The various fire organizations give the community adequate fire protection through mutual aid....As mentioned above, the fire stations are in good to excellent condition and are adequately spaced so, even with population increase, it is not foreseen that new facilities will be necessary in the Town of Chatham during the planning period. As with any automotive equipment, however, the various fire companies will have to, as in the past, replace fire equipment as it either becomes unserviceable or outmoded due to its age.” Town of Chatham, Comprehensive Plan, 1971 at Page VI-3.

Clearly, the Comprehensive Plan writers contemplated that the buildings, should they become obsolete (just as the ‘automotive equipment’), would need to be replaced since they found that during the “planning period” covered by the Plan it appeared that the fire houses would be adequate. The 1971 Plan finds that “Depending on a community’s growth an updating of the overall comprehensive plan should be considered every eight to fifteen years.” Id. at page VII-25.

The 1971 Comprehensive Plan is now 35 years old and is widely accepted as out-dated. Indeed, the Town is nearing the end of study that will result in a new Plan within the next several months. The Town Board finds that based upon the testimony at the public hearing and its individual and collective personal knowledge, the Tri-Village Fire houses have become obsolete and must be replaced in accordance with the current Comp Plan.

Further, the Town Code at Section 180-15, Business Zone, encompasses the location of the project. The legislative intent and actual impact of the Code was to allow for public facilities to be used in the zone. The testimony at the public showed that the proposed firehouse is a public facility. Since the Town Code does not define the term ‘public facility’ the Board must utilize the plain meaning of the words. According to the New American Webster Dictionary, Third Edition, the term ‘public’ means “pertaining to the people at large” or “engaged in service to the people.” While a ‘facility’ is “a building, etc. designed to serve a particular purpose.” Logically, a firehouse is a building designed to or assist in service to the people since its function is to house fire and emergency equipment for use in protecting the people of the Town of Chatham from fire dangers. Thus the Board finds that the project is consistent with legislative intent within the Town, and

**IT IS FURTHER RESOLVED**, that the Town Board finds that the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved and the extent of the public interest to be served are as follows: The Tri-Village Fire Company is a not-for-profit corporation under contract with the Town of Chatham to provide one of, if not the single most important public service to the citizens of the Town. The proposed use for the land is the construction of a new firehouse to consolidate two of the existing three firehouses in the Applicant’s coverage area and is to be located in a zoning district in which the use is allowed as a permitted use. In this regard, the Board finds that the need to provide fire and emergency protection is exceedingly valuable and significant to the residents and determines that the nature and scope of Tri-Village’s project and the extent of the public interest to be served is of the utmost magnitude and that the proposed use is one which is consistent with the Town Zoning, and

**IT IS FURTHER RESOLVED**, that the Town Board finds that the effect local land use regulation would have on the enterprise would be minimal since as discussed above, the proposed use of firehouse fits squarely into the permitted use of the Business Zone in which it is located as a public facility. Further, the subdivision of the land and the associated area variance as it relates to minimum road frontage, are of minimal impact. The minor two-parcel subdivision application proposes to split 4.9 acres from an existing 17.4-acre parcel. Minimum lot size in the zone is two acres, thus there is no impact in that regard. The testimony of the Applicant at the public hearing revealed that the Columbia County Department of Public Works has granted preliminary approval of the location of the proposed driveway to the facility, pending actual design parameters since the sight distances are greater than is deemed necessary for safe ingress and egress to the firehouse. Therefore, the primary purpose for minimum road frontage, and thus the need for an area variance, are satisfied, and

**IT IS FURTHER RESOLVED**, that the Town Board finds that there may be minimal impacts on legitimate local interests in the form of a potential for increase in sound and/or dust from the location, increased traffic at the site, surface or groundwater runoff and solid waste production. However, each of these possible impacts are mitigated and/or eliminated by the location itself. As mentioned above, testimony made during the public hearing leads the Board to find the sight distances exceed that which is necessary for safe access to the parcel. Further, County Route 13 is already traveled by the firefighters and emergency personnel when responding to the current firehouses and to emergencies since the existing Chatham Center firehouse is approximately one-tenth of a mile away from the proposed site. Lastly, notwithstanding any grant of exemption from Town Code, the Applicant must still comply with NYSDEC stormwater prevention requirements, SEQRA and Columbia County Department of Health requirements as they relate to septic/sewage treatment at the facility. Thus, environmental issues that may impact local interests shall be appropriately addressed.

The Board takes note of the presence of members of a group recently formed to oppose the project, together with their counsel, at the public hearing. The Board further takes great significance in the fact that despite being present and having the opportunity to be heard, they chose to remain silent and offer

no testimony or evidence either in opposition to the issue of local land use regulation exemption or in regard to the matter in any fashion; and

**IT IS FURTHER RESOLVED**, that the Town Board finds that there are no alternative locations for the facility in less restrictive zoning areas and that there are no alternative methods of providing the needed improvement. Indeed, as set forth above, the parcel is located in a Business Zone where the proposed firehouse is allowed as a permitted use. Further, the members of the Applicant presented testimony at the public hearing with regard to their extensive unsuccessful efforts to locate land in other locations on which to build the proposed firehouse over the past several years; and

**IT IS FURTHER RESOLVED**, that the Town Board finds that there has been and shall continue to be considerable intergovernmental participation in the project development process. Approximately three years ago, the Applicant approached the Town at regular monthly Town Board meeting and informed the Town and the public of the plan to purchase land in the general location at which the project is proposed to be located. They invited public input and the assistance of the Town Board. Further, Columbia County DPW has participated in the project in the review of the “curb-cut” approval and Columbia County Department of Health must review and approve any septic/sewage design proposed for the project, prior to construction. Significantly, the matter has heretofore been forwarded to the Columbia County Planning Board, which has not only found that the project has a significant inter-municipal impact, but also recommended (emphasis added) approval of the project. Further, the Applicant has indicated its willingness and current intention to proceed with its application for subdivision approval and site plan approval before the Town Planning Board and for approval of the area variance by the Zoning Board of Appeals, notwithstanding the within determination by the Town Board; and

**IT IS FURTHER RESOLVED**, that the Town Board finds that there has been ample opportunity for the public and others to be heard. The public hearing was conducted in an open meeting at the Town Board’s regular meeting, following notice thereof being published in the Town’s official newspaper and service of the notice upon counsel for the only known group in opposition to the project. Further, the public has had and shall continue to have the opportunity to be heard at the Planning Board and ZBA levels during the on-going project review. Lastly, the County Planning Board meeting at which the application was considered was open to the public.

**IT IS FURTHER RESOLVED** that the Town Board of the Town of Chatham hereby finds that upon the balancing of all factors in relation to the applications of the Tri-Village Fire Company, for the project to subdivide land from an existing parcel in a Business Zone and to construct a new firehouse are exempt from the applicability of the Town of Chatham land use regulations; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is directed to file this Resolution in the appropriate index within five (5) business days.

Councilman Balcom seconded the motion.

	<u>Aye</u>	<u>Nay</u>
Jesse DeGrootd, Supervisor	<u>X</u>	_____
Beth Ann Ripple	<u>X</u>	_____
Donald Hegeman	<u>X</u>	_____
Jean Rhode	<u>X</u>	_____
Robert Balcom	<u>X</u>	_____

Unanimous vote of 5 to 0. The Town Board of the Town of Chatham hereby determines under the County of Monroe “balancing test” that the applications of the Tri Village Fire Company herein is exempt from the applicability of the Town of Chatham land use regulations, including subdivision, site plan and zoning (area variance for minimum road frontage) in connection with its project to purchase land on Route 13 from the Old Chatham Tennis Club for the purpose of constructing a new firehouse.

**PUBLIC COMMENT**

**RICK WERWAISS** would like the people present to consider staying after the meeting to stay for a visual presentation by the Comp Plan Land Use Committee. The next one will be at the Old Town Hall in Chatham Center on May 23.

**ALBERT ROSS** thanked the Town Board for backing the Tri-Village Fire Co. request for new Fire House building.

**STANLEY KOLOSKI** is looking forward to completing the application procedures.

**JACK CURRY** he stated that he does not live in our town but is developing land in the area, accused the Tri-Village members of intimidating someone at a recent meeting. Firefighters present denied that this ever happened.

**ERIC OOMS** appreciates that the Town Board is speaking for the majority of residents concerning the building of a new fire house.

**MALCOM WHEELER** a life member of the Tri-Village Fire Co. and a resident of the town that lives in close proximity to the proposed new fire house has no problem with it being at that location.

**MELISSA POLLACK** is very happy that the proposed new fire house will be near her home.

**PETER SNTIAGO** who is running for Assemblyman is in favor of the new building for the Tri-Village Fire Co.

Motion was made by Supervisor DeGrootd, seconded by Councilman Rippel and carried to go into executive session at 8:30 pm to discuss negotiations. Motion was made by Supervisor DeGrootd, seconded by Councilman Balcom to go out of executive session at 8:45 pm.

Motion was made by Supervisor DeGrootd, seconded by Councilman Ripple and carried to adjourn at 8:46 pm.

Respectfully submitted by,

Carol Gregg RMC  
Town Clerk