

Supervisor Walters call the meeting to order at 6:00 p.m.

**TOWN BOARD MEMBERS**

PRESENT:	Steven J. Walters	Supervisor
	Thomas M. Best, Sr.	Councilman
	Joan A. Kesner	Councilwoman
	Thomas Quatroche, Jr.	Councilman
	Kevin Smardz	Councilman

OTHERS PRESENT: Catherine A. Rybczynski, Town Clerk; Mary Dosch, Sr. Account Clerk; Gerard Kapsiak, Town Engineer; Christopher Hull, Director of Community Development; Kenneth Farrell, Town Attorney; James Connolly, Town Highway Superintendent, Drew Reilly, Planning Consultant; Brian Doyle, Deputy Town Attorney.

**1.**

On a motion of Councilman Quatroche, seconded by Supervisor Walters, the following resolution was

ADOPTED	Ayes 5	Walters, Best, Kesner, Quatroche, Smardz
	Noes 0	

**RESOLVED**, that the Town Board approve the salary adjustment for Curt Herrmann and Joseph Wenzel to \$24.16 per hour effective February 5, 2008.

Councilwoman Kesner question why their salary rate has changed.

Supervisor Walters responds that there were three Recreation specialists in the Town, two with Recreation and one with Senior Services. Somehow the Senior Services Recreation specialist got ahead and these two got behind. This is so all three are at the same level.

**2.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was

ADOPTED	Ayes 5	Walters, Best, Kesner, Quatroche, Smardz
	Noes 0	

**RESOLVED**, that Judge Gerald P. Gorman be allowed to attend the Association of Towns Conference in New York City on February 16 through February 19, 2008 at a cost of \$1100.00. Funds need to be transferred from contingency funds into A 1110.492 Seminars.

**3.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was ADOPTED Ayes 5 Walters, Best, Kesner, Quatroche, Smardz Noes 0

BE IT RESOLVED, that the Town Board grant permission for Supervisor Walters to sign the Maintenance Agreement with United Business Systems in the amount \$895.00. Money is available in account A 3620.409. This is for the copy machine in the Building Inspection Department.

4.

On a motion of Councilman Smardz, seconded by Councilman Quatroche, the following resolution was

ADOPTED Ayes 5 Walters, Best, Kesner, Quatroche, Smardz Noes 0

WHEREAS, the Mount Vernon Sewer District, located in the Town of Hamburg, County of Erie, and State of New York, is governed by a Board of Sewer Commissioners; and

WHEREAS, the Town of Hamburg, on behalf of the Mount Vernon Sewer District, is in the process of receiving financial assistance from the New York State Department of Environmental Conservation (NYSDEC) in the form of a grant for proposed sanitary sewer rehabilitation work within the Mount Vernon Sewer District; and

WHEREAS, under the laws of the State of New York, the legal authority to file the application with NYSDEC and receive funds utilizing State and Federal assistance payments is the Town of Hamburg, on behalf of the Mount Vernon Sewer District; and

WHEREAS, the Town of Hamburg, herein called the "Municipality", after thorough consideration of the proposed sanitary sewer rehabilitation project, has hereby determined that the work, as described in the application and attachments previously filed on behalf of the Mount Vernon Sewer District, herein call the "Project", is desirable, in the public interest, and required in order to implement the project; and

WHEREAS, pursuant to State Bond Acts enacted in 1965, 1972, and 1996 and the Environmental Protection Fund, as well as Federal grant awards available for such projects, the Environmental Conservation Law (ECL) authorizes State assistance to municipalities for water quality improvement projects by means of a contract, and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith;

NOW, THEREFORE BE IT RESOLVED by the Town Board of the Town of Hamburg, as follows:

- 1. That the Town Supervisor is the representative authorized to act in behalf of the

Municipality's governing body in all matters related to State assistance under ECL Articles 17, 51, and 56 and/or any applicable Federal grant provisions. The representative is also authorized to make application, execute the State Assistance Contract, submit Project documentation, and otherwise act for the Municipality's governing body in all matters related to the Project and to State assistance;

2. That the Municipality agrees that it will fund its portion of the cost of the Project, and that funds will be available to initiate the Project's field work within twelve (12) months of written approval of its application by the Department of Environmental Conservation;
3. That one (1) certified copy of this Resolution be prepared by the Town Clerk and provided to the Town Engineering Department for transmittal to the Albany office of the New York State Department of Environmental Conservation;
4. That this Resolution shall take effect immediately.

Councilman Best requests that the Supervisor explain what all this means.

Gerard Kapsiak responds that this is in regard to calling for a public hearing that the Town Board did last week. The sewer district has a grant of \$750,000. toward the \$900,000 project from the State DEC. The Mount Vernon Sewer District is not legally authorized to enter into an agreement with the State for this funding, so they have to do it through the township that they're located in. There will be no cost at all to the Town. The Town acts as the official body to administer or receive the contract for Mount Vernon.

Councilman Best asks if the Mount Vernon Sewer District residents' sewer tax will go up.

Mr. Kapsiak responds that he can't say if it will go up or not.

5. On a motion of Councilman Smardz, seconded by Councilman Best, the following resolution





**WHEREAS**, the United States conducts a decennial census of its population which is coordinated through the United States Census Bureau along with appropriated state, county and local jurisdictions, and

**WHEREAS**, the Town of Hamburg as a local jurisdiction must complete preliminary census work for the upcoming 2010 decennial census, and

**WHEREAS**, the towns Census committee has recommended that an intern be acquired to assist the town with its Census 2010 requirements.

**NOW, THEREFORE BE IT RESOLVED**, that the Hamburg Town Board authorize the Census Committee to take on an intern to assist the town with the 2010 Census and specifically with its Local Updating of Census Addresses (LUCA).

**BE IT FURTHER RESOLVED**, that the town name Geoff Butlak, a senior Geography student at the University of Buffalo to complete the LUCA during the internship which shall be between February 6<sup>th</sup> through April 1<sup>st</sup>. Mr. Butlak shall receive three (3) credit hours from UB for completing this task and there shall be no cost to the town.

**9.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was ADOPTED  
Ayes 5 Walters, Best, Kesner, Quatroche, Smardz  
Noes 0

**RESOLVED**, that the Town Board approve the transfer of funds in the Finance Department as follows:

FROM:

Contingency                                    A 1990.419                                    \$4,310.00  
Nature of account

TO:

Taxes & Assessment on  
Town property                                    A 1950.417                                    \$4,310.00  
Increase in sewer tax for 2008.

**10.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was ADOPTED  
Ayes 5 Walters, Best, Kesner, Quatroche, Smardz  
Noes 0

**RESOLVED**, that the Town Board approve the transfer of funds in the Police Department as follows:



## AUDIT OF CASH DISBURSEMENTS

		VOUCHER #'S		
OPERATING FUND:				
BATCH #	11	\$448,660.32	24214-24332	
BATCH #	12	\$580,652.50	24335	
BATCH #	13	\$53,190.57	24339-24401	
BATCH #	14	\$1,475,000.00	24402	
BATCH #	15	\$260,693.08	24404-24504	
BATCH #	16	\$71,921.80	UNPROCESSED	
BATCH #				
TOTAL OPERATING FUND DISBURSEMENTS:				\$2,890,118.27
TRUST & AGENCY:				
BATCH #	6	\$200,219.44	9920128	
BATCH #				
BATCH #				
BATCH #				
TOTAL TRUST & AGENCY DISBURSEMENTS:				\$200,219.44
CAPITAL FUND DISBURSEMENTS:				
BATCH #	6	\$600,658.33	24334	
BATCH #	7	\$43,441.00	24337-24338	
BATCH #	8	\$975,000.00	24403	
BATCH #				
BATCH #				
TOTAL CAPITAL FUND DISBURSEMENTS:				\$1,619,099.33
PAYROLL:				
PR #				
TOTAL PAYROLL DISBURSEMENTS:				\$0.00
PETTY CASH				\$0.00

TOTAL CASH DISBURSEMENTS SUBMITTED FOR AUDIT:

\$4,709,437.04

Mr. James Cleary, owner of B&S Mini Storage, on Southwestern Blvd and Abel Rd. comments that he is looking at trying to buy a piece of property next door and proposes deeding 3/4 of that property back to the Town for green space. This will allow him to expand but also allow him to landscape making the storage buildings not so visible.

Councilman Best questions that at some point in time there will be an exchange in property.

Mr. Cleary responds that there will be an exchange. It will roughly be about two acres, exchanging roughly one acre for two.

Mr. Drew Reilly notes that a few years ago the Town investigated public mini storage because there were a lot being built. The Town investigated it and at that time decided that there was enough and they were worried about losing good commercial property for that. They decided to out-zone it, basically said that what we had as existing was enough. So, to accomplish this, the first thing the Town would have to do is amend the zoning code, then taking this property and re-zone it. It would be a two step process. Then the comprehensive plan would have to support the re-zoning.

Mr. Cleary responds that since he has opened he has run anywhere from 89-95% occupancy.

Councilwoman Kesner asks Mr. Cleary if he has a plan to show how it backs up to the residential area.

Mr. Cleary responds that he has given some plans to Dick Smith and the Town has a set. Mr. Cleary reiterates that there will not be any access onto Abel Rd. The access would be through the existing area.

Councilwoman Kesner compliments Mr. Cleary for keeping up his grounds very nice, she has visited his oil change shop. She has a lot of faith in the way he manages his business, the thought process behind this is that through reading about different areas in the country that they were discouraging storage bin type businesses on major streets because they wanted to have the businesses thought out. More appealing because it sends a message. Her concern is that there is a residential area back there and she wants to look out for them.

Supervisor Walters notes he would be interested in taking a look at the maps and plans.

Supervisor Walters opens this session of the meeting on the Bike Path and allows Councilwoman Kesner to take over since she has been leading this project.

Councilwoman Kesner thanks everyone for coming. They have been working on this since about 2000 and it really came together in 2001. When the bike trail was looked at, the first thing that has to be done is a trail head, which is a parking lot. They felt that by putting it in the Hoover Beach community it would serve the Hoover Beach community double fold. This would serve as parking for patrons of the businesses as well as a trail head. They received a couple of State grants to implement this project and with that a committee was started. The first trail leads to the Woodlawn State Park connects to the trail at the State Park. The second link takes you to the Hoak's Restaurant. The DOT sat down with them to show them how they could put this pedestrian/recreation crossing for families to make it safe to cross. They have been working with the Town of Evans, Orchard Park and the City of Buffalo on a waterfront bike trail. Councilman Best had brought to her attention that there were some Hoover Beach residents that are not in favor of this project and that was the first she has heard of that. The intent of this project is not to disrupt the neighborhood but to enhance it. This is a lakefront bike trail that will take you to the Penn Dixie Site.

Councilman Best notes that he has talked to a couple of the members of the association and their concerns are infringement upon their neighbor.

Florence Kearn, Pres. of Hoover Beach Association, notes they want a bike path but not one that will infringe on the community. There are concerns with traffic and wishes it be away from the community.

Councilman Best notes concerns from a few of the members about Route 5.

Rose Santez, Treasurer of Hoover Beach, notes that this past summer people came down to the beach and the police had to be called.

Judy Witt, Secretary of Hoover Beach, comments that the residents are responsible for the beach and they are liable for what happens on the beach in front of their homes. It is not a public beach, it's private property.

Florence Kearn notes that the bike path needs to be relocated away from the residents of Hoover Beach.

Councilwoman Kesner notes that they have been working on this for five years and somehow the communications broke down because there are differences of ideas.

Bob McKenzie notes that he has been on the bike path committee from the Hoover Beach Association since 2001 and there has been many meetings where all conditions of the present existing drawings were presented and met by the design element. His understanding was the conditions were met and complied with in the presentation of the bike path as it exists.

Councilman Best responds that his main concern is the people's feelings, he doesn't have to live there, but they do. If they don't want it, he won't vote for it.

Councilwoman Kesner notes that from day one she went to the association and said there was no way she wanted to infringe on your neighborhood. This could be worked out so everyone could be happy. That's why they moved it on the other side of the residents. They never had the intention to infringe on their neighborhood. They never heard these concerns at the meetings.

Florence Kern notes that it's still an infringement on their community. She states she never saw any plans or never been informed as to what else was going to happen.

Dennis Kruz notes that he was at a meeting with Joan. This bike path is going to go around the Town Park, they're not going to allow all these people on bikes to go down into the beach area. If these people get hurt he gets sued. People don't care about signs.

Carol Melnick reports that she is for the bike path but is appalled that here is a big discussion and there seems to be some communication within the association that's definitely missing.

Bill Rose, resident, questions if there is only one plan. He feels that either you're for or against this plan.

Councilwoman Kesner responds that the committee can back her up on this one, once they got toward the intersection by Route 5, they had to get permission from the State to cross their road. For two years they went back and forth to prove the State DOT owns Route 5. There are some other owners of property they had to get clearance from. It's not just Town property they're dealing with it's also some State property.

Ted Berg, resident, notes that the problem they have here is that they haven't seen a map up until just now. The right of way runs very close to the houses.

Drew Reilly notes that this is the tenth option, there aren't any more. If this is turned down, the project is over. The State of New York has submitted a letter basically saying you had until the end of this past year but if it doesn't happen there will be no grant, there will be no project. There were meetings galore on different issues in regard to this. The decision has to be made, there aren't any more options at this point.

Mr. Denezo, resident, notes that you can change plans and move things, he feels there is pressure being put on the resident to make a decision because the money will go and disappear. That he sees right through all of this. Safety is the issue here. Hoover Beach Rd. has become a race track. He feels this path can be moved but somebody doesn't want it moved. He states he has become the eyes and ears of his community. He takes care of his community 24/7.

Councilwoman Kesner responds that the grant was secured with a project designated for Hoover, it cannot be moved. If they move it, it becomes a change of purpose and they have to reapply all over again. This would be scrapped and started from scratch. When you apply for a grant you have to be specific, you have to tell them this is going to be the area, this is the purpose.

Mr. Denezo, states he is for it. There are things that he doesn't particularly like.

Joe Killian notes it's implied there will be danger. You can't stick people in a bubble and protect them from every single angle.

John Bogelman, member of Hoover Beach Association, notes that Councilwoman Kesner is going to enhance their neighborhood, but they don't need anymore enhancement.

John Paskiewicz, VP of Hoover Beach Association, responds that he has a couple of issues with this. At the Hoover Beach meeting he did raise his hand and asked about the trees. He doesn't want people sitting there watching his home and family. Also, people want to get down to the water there will be people wandering down there.

Councilwoman Kesner responds that this really saddens her to hear all this tonight. She made every effort to make sure the association had representation on this planning process. For whatever reason, whether it was communication or something else, she apologizes, because her intention was to have them totally involved in every aspect of the planning. She suggest that the Hoover Beach group get together and write down all the concerns and submit it to the Board.

Councilman Quatroche notes that if it is all possible for the Hoover Beach Association, also give a recommendation to the Board because there are varying opinions in the room. It will be very helpful to the Board to know what the associations position is representing the residents.

Sandy Wellington, resident, states her concern is that she didn't have any information. What is the time line for this.

Councilwoman Kesner will lend the maps to Florence Kearn so people from the community can view the plans.

Florence Kearn notes that she will take the plans and a meeting will be called so anyone that wishes to come can come in and see the plans so they get a full view of what's going on.

Drew Reilly comments that the bike path design was looked at by every possible agency. The time frame is within the next 30 to 60 days something has to happen because they want a report or they will cancel the funding.

Mr. Denezo questions if once the grant money it is obtained does it have to be held against those plans, or can you change the plans after the grant money is obtained.

Mr. Reilly notes that the Town has to spend the money first and then submit it.

Sandy Wellington questions if there will be any other impact if they don't get the grant funds for the bike path project and what else will be effected.

Councilwoman Kesner responds that probably they will never get another grant for a bike path in the Town.

Councilman Quatroche asks Drew Reilly if he could make himself available to discuss the maps with the residents.

Judy Witt notes that she is under the impression there is an easement on the side of Hoover Rd. and questions if that is on both sides of the road.

Drew Reilly responds that he isn't sure he's not the designer.

Joe Killian notes that it's hard to have a project near the finish line and then to have all these problems it's not what he had in mind. The idea was to have a bike path for people and neighbors to walk and see each other.

Supervisor Walters thanks everyone for coming out.

Jack Kuebler notes that the stretch of property from Southwestern Blvd. to Dorchester has been problematic for the Town so it could be developed. He has purchased both parcels that are now one parcel. It's approximately and acre of land, his argument is those restrictions are too far restrictive certainly doing anything with that zoning. He sees some form of drug store along this area with a drive thru also a pizza place.

Drew Reilly notes that it's possible for a florist probably, drug store probably not, hair salon and personal services are also allowed in this zoning.

Supervisor Walters notes that an issue with this area is that McKinley from seven corners to Milestrip has been developed except from that stretch of land.

Councilman Quatroche notes that the only thing that's different from that discussion is that there are some houses along there.

Supervisor Walters adds that Mr. Kuebler could put two 6,000 square foot buildings on the property but not one 10,000 square foot building.

Drew Reilly notes that the use was very unique too. His use doesn't generate a lot of parking if it was a regular retail use you wouldn't fit two 6,000 square foot or a 10,000 square foot building. It's a difficult issue.

Councilman Quatroche adds that the intention of that was not building size restriction it was use restriction. This needs to be looked at again.

Jack Kuebler notes that he's in the swimming pool industry and that's what he would like to do there. In the event that something would happen and the project failed, it would be difficult to

find a tenant under the HC zoning.

Councilman Quatroche notes that even the way they got the residents to look at up-zoning was with the C-3 zoning it could be four or five story building. It would be better to have a nice one story building to look at.

Drew Reilly notes that what Mr. Kuebler is looking for and what the Town Board is looking for, is there a better solution, he's not sure, they have looked at it a billion different ways.

Councilman Quatroche notes that this is perfect timing to bring this to the table.

Jack Kuebler responds that the mall is there, and this is a major artery. If re-zoning is done just by application, you'll be much more likely to get smaller business in there.

Mr. Reilly notes that there are requests to change commercial zoning to residential because the people don't want to be near a business.

Councilwoman Kesner notes that it's people protecting their biggest investment, their home. A lot of these people have been there for many, many years and they don't want to sell their homes.

Mr. Kuebler notes that he would like to make application to have this re-zoned. His suggestion is that maybe the Town wants to take this case by case and see what's going in there. Re-zone property by property so they can manage what's going to happen there a bit better.

Mr. Reilly responds that it can't be done, they would be breaking the law doing it individually. It has to be considered as a regional plan.

**14.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was

ADOPTED                   Ayes 5                   Walters, Best, Kesner, Quatroche, Smardz  
                                  Noes 0

Move into Executive Session on legal matters at 8:15 pm.

**1.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was

ADOPTED                   Ayes 5                   Walters, Best, Kesner, Quatroche, Smardz  
                                  Noes 0

WHEREAS, there is pending litigation, EDWARD SCHNEIDER and PATRICIA SCHNEIDER VS. TOWN OF HAMBURG, Erie County Supreme Court Index Number I2005/009692, and

WHEREAS, counsel for the parties have exchanged pleadings, conducted discovery and various other proceedings, and have engaged in settlement negotiations, and

WHEREAS, the Defendant has advised they would accept the sum of \$30,000 in full and final satisfaction of all claims, and

WHEREAS, counsel for the Town of Hamburg, Lewis & Lewis, recommends that the Town pay the sum of \$30,000 in settlement of this claim based on the following:

- a) the Town’s retained counsel, Lewis & Lewis, P.C., believes that there is probable liability on the part of the Town of Hamburg with comparative negligence of the Plaintiff.
- b) injuries are significant
- c) the original demand of \$100,000 was reduced to the current settlement demand of \$30,000
- d) the Town’s retained counsel estimates the value of the case is between \$25,000 and \$35,000
- e) the cost of trial are estimated at \$20,000 or more

NOW THEREFORE BE IT RESOLVED, that the Town of Hamburg pay the Plaintiff the sum of \$30,000 in full and final satisfaction of all claims against the Town of Hamburg in the action EDWARD SCHNEIDER and PATRICIA SCHNEIDER VS TOWN OF HAMBURG, Erie County Supreme Court Index Number I2005/009692. Payment is to be made upon receipt of signed General Release and Stipulation of Discontinuance of this action from the Plaintiff.

**2.**

On a motion of Supervisor Walters, seconded by Councilwoman Kesner, the following resolution was

ADOPTED	Ayes 5	Walters, Best, Kesner, Quatroche, Smardz
	Noes 0	

WHEREAS, there is pending litigation, GARY DEVESO, Individually and as Father and Legal Guardian of DILLON M. SWIATEK VS TOWN OF HAMBURG, Erie County Supreme Court Index Number I2003-8114, and

WHEREAS, counsel for the parties have exchanged pleadings, conducted discovery and various other proceedings, and have engaged in settlement negotiations, and

WHEREAS, the Defendant has advised they would accept the sum of \$10,000 in full and final satisfaction of all claims against the Town of Hamburg, and

WHEREAS, counsel for the Town of Hamburg, Lewis & Lewis, P.C. recommends that the Town pay the sum of \$10,000 in settlement of this claim based on the following:

a) The Plaintiff’s claim of liability is based upon non enforcement of a no parking zone. The Town of Hamburg’s Motion for Summary Judgment has been denied and an Appeal of this Decision has been filed. The cost of perfecting and arguing this Appeal is estimated to be approximately \$5,000.00.

b) There are two co-defendant in this case, the other co-defendant is paying \$80,000 of the \$90,000 settlement, and the Town’s share is \$10,000

c) This matter is scheduled for trial. Judge Glowonia has advised the Town’s counsel he will not Stay the trail of this matter. As such, trial expenses would be incurred to continue the defense of this case, and the amount of such expenses would clearly exceed the cost of the proposed settlement; moreover, there also would remain the possibility of a verdict against the Town of Hamburg

NOW THEREFORE BE IT RESOLVED that the Town of Hamburg pay the Plaintiff the sum of \$10,000 in full and final satisfaction of all claims against the Town of Hamburg in the action GARY DEVESO, Individually and as Father and Legal Guardian of DILLON M. SWIATEK VS TOWN OF HAMBURG, Erie County Supreme Court Index Number I2003-8114. Payment is to be made upon receipt of signed General Release and Stipulation of Discontinuance of this action from the Plaintiff.

**3.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was ADOPTED Ayes 5 Walters, Best, Kesner, Quatroche, Smardz Noes 0

**RESOLVED**, that the Town Board close Executive Session at 8:15 p.m.

**4.**

On a motion of Supervisor Walters, seconded by Councilman Best, the following resolution was ADOPTED Ayes 5 Walters, Best, Kesner, Quatroche, Smardz Noes 0

**RESOLVED**, that the Town Board adjourn at 8:15 p.m

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Catherine A. Rybczynski, Town Clerk