

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

The Town Board of the Town of Philipstown held a Public Hearing on the above date at 7:00 p.m., at the Town Hall, 238 Main Street, Cold Spring, New York. The purpose of the Public Hearing is to hear comments for/against the Town Board considering the establishment of a fire district upon the dissolution of the Garrison Fire Protection District of the Town of Philipstown.

PRESENT:

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| Richard Shea | Supervisor |
| Nancy Montgomery | Councilwoman |
| John Van Tassel | Councilman |
| Michael Leonard | Councilman |
| Robert Flaherty | Councilman |

Supervisor Shea opened the meeting with the Salute to the Flag.

Town Clerk Merando read the public notice.

Mark Butler, Esq., representing the town, began the meeting with a PowerPoint presentation. (The presentation can be seen on the town's website www.philipstown.com)

What is a Fire District? – It is a political subdivision of the State of New York. Town Law 174(7) indicates the same that the Fire District is a public corporation. In that regard it's the same as a town, village or a city. There are four entities in New York State that can operate fire services. (A town, village, city or a fire district.) It's anticipated by the creation of this fire district, it is the town's responsibility to provide fire protection within the Garrison Fire Protection District of the Town of Philipstown. He noted that the description read this evening by the Town Clerk is the legal description of the Garrison Protection District. There will be a public hearing later this evening for the dissolution of the Garrison Fire Protection District. A fire protection cannot co-exist with a fire district - it has to be one or the other. The process that the Town Board is considering this evening is the formation of the fire district. If this moves forward, the fire protection district must be dissolved. The creation of the fire protection district previously obligates the town to provide fire protection within that district. The current scenario is that the Town Board contracts with the Garrison Volunteer Fire Company, Inc.

The shift here is that with the creation of a fire district, the Town Board shifts its responsibility, legally, for operating the fire services within that fire protection district. The fire protection district is dissolved, and the new fire district becomes legally responsible as a new municipal entity rather than the Town Board. The fact is that the town gets out of the fire protection business entirely.

Fire Companies' personnel wear two hats – first, a membership hat when they are off duty. Currently, when they go on duty, they are Town of Philipstown employees. He noted that the law treats them as the town's employees without compensation, which makes the town legally responsible. That responsibility is traded off. The

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Garrison Fire District then becomes the employer or the responsible entity. The proposal before the Town Board is that the Garrison Fire District would operate fire services within its boundaries and there will no longer be any contracts. He went on to say that for many years the fire company has contracted with the town and the town has collected the taxes, conducted budget hearings and negotiated those contracts. The fire district itself will set the budget for services and administer all of the funds raised by taxes as a separate municipal entity. He noted that nothing internally changes for the fire company. It does not affect the fire company's corporate status. They are not-for-profit as prescribed by New York State Law. They can still conduct their fundraising activities, as well as its member's activities.

The only change is, who is responsible for the fire company's operations in terms of on-duty activity? Currently, it is the Town Board. Subsequently, if the fire district is created, the Board of Commissioners will take on that task. They are required to provide the VFBL protection, and workers' compensation. He then addressed the Length of Service Award Program (LOSAP), stating that under the provisions of the General Municipal Law, those funds will shift to the fire district and they would be responsible for all obligations of that program.

He explained that the fire district's responsibilities are to provide fire protection instead of the town. There is a public process for setting the budget, which parallels with the town's process. A proposed budget is prepared, which is to be filed prior to the public budget hearing. There is a mandatory budget hearing that must be held the third Tuesday in October every year. It is open to the public for comments on any element of the budget. Following that public budget hearing, the Board of Fire Commissioners has to approve a final budget. Changes can be made, with one exception, that any capital reserve fund made in the proposed budget cannot be changed. The budget must be adopted no later than November 4th and filed, in duplicate, with the Town Clerk by November 7th. Even though the fire district prepares the budget, the taxation is attached to the town's budget and taxed as a separate line on the tax bill. He noted for the record that the town has no authority to change anything in the fire district's budget. The Supervisor is required by law to turn over the funds, collected by taxes, to the newly formed fire district.

He then further discussed the public process for the budget. The fire district is subject to the tax levy cap the same way the Town Board is. The only time that the fire district is exempt from that is the first budget it creates. He did note that one issue that some municipalities have experienced is the issue of runaway spending/borrowing. A fire district's only avenue for borrowing is the issuance of bonds. A fire district must have a mandatory referendum for voter approval of any bonding, which provides additional transparency for the taxpayers of the district.

He also pointed out that as any other municipal entity, the fire district is obligated to follow General Municipal Law 103 and 104, which pertains to bidding and purchasing.

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Mandatory annual elections are required for fire commissioners, which are held the second Tuesday in December. All meetings held by the fire district are subject to the Open Meetings Law, of which the fire boards of commissioners are responsible for noticing said meetings.

An annual financial is required (AUD), which is due within sixty days of their fiscal year and filed with the NYS Comptroller and the Town Clerk. Similarly, with fire districts having a budget above \$300,000.00, there is a mandatory audit requirement that must be completed within 180 days at the close of the fiscal year.

He explained that commissioners are elected and are subject to the requirements of the Public Officers Law, as is the Treasurer. There are five commissioners. A commissioner cannot serve as a treasurer, as these positions are subordinate. The treasurer can only pay that in which the commissioner directs payment. Vouchers are used, as in any other municipal entity. A secretary is an appointed official and carries out the duties of an administrative assistant (serves a one-year term).

Mr. Butler then explained the public elected terms of the commissioners/secretary (first time appointed by the Town Board):

- The candidate with the most votes – 5-year term
- The candidate with the next most votes – 4-year term
- The candidate with the next most votes – 3-year term
- The candidate with the next most votes – 2-year term
- The candidate with the next most votes – 1-year term
- The Secretary's term is a 3-year term (commissioners can change this from elected to appointed)

Commissioner qualifications - Anyone who is a resident of the fire district who is 18 years of age, who has not been convicted of a felony or any degree of arson and cannot be a fire chief, (that includes any level of fire chief.) He noted that the Board of Commissioners appoints the fire chiefs. The fire chiefs have control over the fire department and its members while on duty, subject to the Board of Fire Commissioners. A commissioner may be a fire company member. There are no exclusion there. They can even be a firematic officer.

The first meeting of the fire district is an organizational meeting following elections, and the treasurer acts as a temporary chair. The first order of business is the election of a fire district chairman. The chair's sole responsibility is chairing the meeting. All resolutions are addressed at their re-org, i.e., banking, etc.

He then reviewed the estimated tax rate and the assessed valuation of the fire district. He further explained that the estimated tax rate, published in the hearing notice, was calculated using 100% equalization rate, which is not the case. The equalization rate is 46.43%.

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Mr. Freilich challenged those figures, as the current tax rate is a \$1.57 per thousand and the current budget is \$600,000.00.

Mr. Butler then discussed the benefits of formation, stating that it is a single purpose public-safety entity that will control training, response and spending. Direct voter approval will cause transparency in the operations of the fire district, including elections and all borrowing. An open budget process allows for public input and voter approval.

Mr. Butler reiterated that if the Town Board decides to form a Fire District, the Fire Protection District must be dissolved.

Terence Hannigan, Attorney, representing the Garrison Fire Protection District, addressed the hours spent and the preparation of the budget the fire company does each year. All the obligations connected with that process would become the responsibility of the Board of Fire Commissioners. He went on to discuss the proposed budget, which is substantially higher. The challenge the fire company experienced was creating a budget that accurately expressed what the real expenses would be. It is anticipated that if approved, the Board of Fire Commissioners will review it and likely make modifications. He and the fire company are confident that nothing submitted is understated, decreasing the chances of looking for additional dollars going forward. He pointed out that in 2015 the fire company received less money than they did in 2005. He further stated that in the proposed budget there is \$90,000.00 allocated for reserves. Historically, when the fire company did receive reserve funding on an annual basis that amount was approximately \$110,000.00. He noted that once a fire district is established, reserves are the only mechanism for them to save money going forward. The reserve fund is very limited as it can only be used for real property, construction of buildings, purchase of apparatus and equipment. He announced that to outfit one fire fighter in turnout gear costs \$2,300.00. That's not counting the air packs. Finally, Mr. Hannigan stated that he is confident that numbers in the proposed budget are real numbers and will probably be adopted.

Supervisor Shea stated that the Town Board isn't going to view the budget at this time. He professed that the number is glaring and there will be plenty of time to review this at a later date. The Town Board would not be making any decisions tonight.

Supervisor Shea questioned Mr. Hannigan regarding the disposition of all the assets of the fire company? Mr. Hannigan responded saying that the rolling stock would be transferred to the fire district. With regard to the fire stations, that will be determined. In some instances, the fire district doesn't own the buildings - they would then rent it from the fire company. The fact that the fire company owns the facilities, the possibility of a transfer of ownership or a lease agreement would work out. He noted for the record that the monies collected for leasing would not be a profit center. The

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Fire Company will not make money on that leasing agreement. Brief discussions continued with regard to different scenarios.

Councilwoman Montgomery asked if the leasing fees are included in the budget? Mr. Hannigan answered saying that they are not, however, the utilities to run the building are included.

Mr. Butler interjected that the last pages of the budget shows the first and second mortgages and that should be used as a lease payment, plus the utilities and maintenance.

Councilman Flaherty asked if a fire fighter was injured or even worse, could they sue the town? Mr. Butler stated that they could not - they are covered under their own Worker's Comp as a fire district.

Councilman Van Tassel added that another benefit for the fire company is that there are additional people for overseeing the operations and fund disbursement as a district. The Board of Fire Commissioners can also deal with any personnel issues.

Joe Regele stated that he understands that the budget would be discussed at another time and is very concerned about that. He finds a \$200,000.00 increase disturbing. He also noted that the fact that the 2005 and the 2015 budget are equivalent is that the Town Board did away with their reserves for two reasons. One being that the reserves was being abused and, secondly, it was inefficient to hold cash in the fire company due to the low return on the cash. He then noted the items that have been purchased over the past few years. He also commented that there is not a single piece of equipment that the fire company has requested and not received, mostly due to leasing vehicles. Mr. Regele stated that the fire company has ended their fiscal years with a surplus. He talked about their turnout gear, which has been purchased and has not reached its limit.

Mr. Regele then explained that in 2017, the second mortgage would be paid off; in 2018, the tank truck will be retired; in 2019, the tanker debt will be paid off, and in 2020, the first mortgage will be satisfied. All of which totals \$250,000.00. With all this considered, there would be an annual surplus in 2020 of \$500,000.00.

Mr. Regele stated that there are 1608 registered voters for the Garrison district, and he knows that over the last four years, voter turnout for the Board of Fire Commissioners in the North Highlands has been 9, 10, 11 and 14 people, which is less than one half of 1% that voted.

Supervisor Shea stated that the budget is proposed and should not be taken as the final product. He agreed that the proposed budget is a huge increase, however, it will be reviewed. He also stated that a lot of the items are contingent.

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Mr. Regele continued expressing his concerns, which included conducting the public hearing in August and not having the proposed budget in hand prior to the hearing. He acknowledged that this matter is moving forward. Supervisor Shea assured Mr. Regele that there would be additional public input on this matter.

Mr. Freilich brought up the proposed rate and the 2% cap. Supervisor Shea then read an article in Town Topics, a New York State Monthly Newsletter that spells out that newly formed Fire Districts are not subject to the tax cap.

Nat Prentice then addressed the board stating that having sat in and participated in budget hearings over the years, and asked the Town Board how this possible change will benefit the taxpayers? Supervisor Shea responded by saying that the town is not in the business of running a fire company. He noted that it takes an incredible amount of time and effort for the board to oversee the fire company. He also stated that the Town Board has never shirked that responsibility. It is also a detriment to other matters that must be addressed by the board. He then turned his comments to the voting process, stating that it is the responsibility of the people to show up and cast their votes.

Supervisor Shea stated that the Town Board has been fiscally conservative. He also said he doesn't believe that the proposed budget should be passed as presented. He went on to discuss the fire commissioners and their role. Councilman Van Tassel interjected that it's more than just the financial side of this; it's also the overseeing of the fire company as a whole.

Councilwoman Montgomery touched on the subject of lobbying the state to have fire district elections fall within the general election cycle when people are more apt to go to the polls.

Councilman Van Tassel added that he personally doesn't feel that the Town Board has the knowledge to know the equipment and when there is a need for the purchase of new fire apparatus.

Councilman Flaherty noted for the record that the voters in the North Highlands Fire District turned down the proposed new firehouse a few times. It wasn't passed until they lowered the budget.

Stan Freilich then brought up the consolidation recommendation for all emergency services in Philipstown.

Councilwoman Montgomery added that she is not a fan of creating a new taxing entity and she believes this is a baby step towards consolidation.

Julia Famularo asked what happens if there is a surplus of monies once the company becomes a district. Mark Butler explained that there are two financial audits - the annual update document and an outside audit that has to be completed.

Mark Butler answered Ms. Famularo question with regard to surplus monies by explaining that there are a couple of options - the first being that those funds can be placed in reserves for future capital purchases. The other option is that it can be used to reduce the tax burden. Ms. Famularo then asked if they don't keep it in the reserves could they just put it in their general fund? Mr. Butler responded saying no, they can't. He noted that there are no limits as to how many reserves the fire district can have.

Zshawn Sullivan expressed her opposition to establishing a fire district, citing an additional tax burden. There was some discussion with regard to the pro's and con's of a fire district, one being taxes, the second is voter turnout.

Grace Wilkie expressed that she is confident that anyone serving as fire commissioners will do their due diligence in the best interest of the residents and the fire district.

Kristen Van Tassel stated that the law changed a few years ago, which now a public vote is required for a district to establish a reserve account. Mr. Butler concurred. Based on that information, Mrs. Van Tassel asked what happens to the \$90,000 reserve proposed in the budget? Mr. Butler stated that there is plenty of time for the voters to approve that reserve. It could occur the first Tuesday in December or a special election can take place. In the event that it's not approved, the monies would be collected and held separately. Those monies would be used to reduce the tax levy the following year.

Joe Mercurio asked if the State Comptrollers Office recommends reserve funds? Mr. Butler responded saying the State Comptroller Office does recommend fiscal planning for future large ticket items.

Mr. Hannigan interjected that he has witnessed the fire company's transfer of those funds to the fire district. He noted that the Garrison Fire Company no longer has reserves.

Carlos Salcedo applauded the Town Board for taking on another large task. He then stated that the large proposed budget is just putting an obstacle in moving forward. He asked the Town Board what was the timetable involved in this process and will the public have additional input. Mr. Butler explained that the Town Board has until October 1st to make a determination. He reviewed the appointment of the fire commissioners as well as the organizational meeting that must be held. The public hearing must occur the third Tuesday in October. It was noted that November 4th is the final day that the fire commissioners can adopt the final budget. On November 7th, the final budget is submitted to the Town Clerk to fulfill the requirements so it can be included in the town's budget.

Public Hearing – Garrison Fire Dissolution/Formation
August 19, 2015

Craig Watters stated that he supported the district and stressed that it is important that there is diversity when considering appointing the fire commissioners.

Supervisor Shea suggested that the Town Board keep the Public Hearing open for future discussion.

Lillian Mosher, speaking as a firefighter for the Village of Cold Spring, stated that she believes that everyone should be looking at another “M” besides money, and that would be morale and membership. She feels as though members of the Garrison Fire Company are her brothers and sisters and she is upset for them and what they are going through. She asked people, who might disagree with this, should consider becoming a member and get a first hand grasp of what it is to be a firefighter.

Joe Hyatt, Chief of the North Highlands Fire District suggested that the Town Board consider someone with firematic experience to serve as fire commissioner.

There being no further comments from the public, Councilwoman Montgomery made a motion, seconded by Councilman Leonard and unanimously carried to adjourn the Public Hearing at 9:00 p.m.

Respectfully submitted by,

Tina M. Merando
Town Clerk