

September 20th, 2011

The regular Town Board meeting of the Town of Stony Creek was held on September 20th, 2011. Supervisor Thomas called the meeting to order at 7:01 PM with members present:

Councilman Dale Aldrich
Councilman Stanley Ross
Councilman William Liebl
Councilman Harry Paul Gill
Attorney James Cooper

August 16, 2011 minutes, Corrections:

Page 77 Change Councilman Thomas to Councilman Aldrich.

Page 82 change legally to illegally.

101-11. A resolution was made by Councilman Aldrich seconded by Councilman Ross to pay the General Funds bills in the amount of \$6,918.18. Roll call vote, all in favor.

102-11. A resolution was made by Councilman Gill seconded by Councilman Aldrich to pay the Highway Fund bills in the amount of \$37,191.76.

Discussion: Councilman Aldrich stated it should be noted there are still some high expenses for culverts and roadwork from Hurricane Irene's deposits.

Roll call vote, all in favor.

Town Clerk report:

Conservation licenses	\$ 5.18
Certified Birth copy	\$ 10.00
Dog Enumeration	\$ 50.00
Marriage license	\$ 17.50
Copies	\$.50
Total Town Clerk fees	\$ 83.18
Dog licenses	<u>\$140.00</u>
Total town revenues to Supervisor	\$223.18
NYS Ag & Markets	\$ 28.00
NYS Dept of Health	\$ 22.50
NYS Environmental Conservation	<u>\$424.82</u>
Total disbursed	\$698.50

Correspondence:

Dog Control Log-July and August 2011.

Margaret Braman-request to use the Town Hall on October 22, 2011 at 10:00 AM for an Eagle Scout Court of Honor Ceremony for Matthew Braman, Kevin Cahill, Joseph Roder.

Stony Creek Free Library- request to use the Town Hall on November 18, 2011 from 7:00 PM to 8:30 PM for a "Fall Gathering".

Casandra Bennett-request to use the Town Hall on October 23rd, 2011 for her son's Birthday Party.

Stony Creek Fire Co.- requesting \$1980.00 in Occupancy Bed Tax funds for a Car Show on October 8th with a rain date of October 15, 2011. Proceeds from the show will go toward the Christmas Party and presents for the kids.

A motion was made by Councilman Ross seconded by Councilman Gill authorizing the use of the town hall to the following:

Margaret Braman for an Eagle Scout Court of Honor Ceremony for Matthew Braman, Kevin Cahill, Joseph Roder October 22, 2011 at 10:00 AM.

Stony Creek Free Library for a "Fall Gathering" November 18th, 2011 from 7:00 PM - 8:30 PM.

Casandra Bennett for her son's Birthday Party on October 23rd, 2011 from 11:30 AM - 4:30 PM.

All in favor, motion carried.

Old Business:

Dean Cemetery:

Supervisor Thomas reported since the last Board meeting he talked with Attorney Cooper a few times and actually went down, walked and looked around the cemetery and at this time he turned it over to Attorney Cooper.

Attorney Cooper stated he promised the Board he would do a quick and dirty look into the back title of the cemetery and that involved calling the Warren County Office of Real Property Services. In many cases for tax map numbers they keep a 3x5 card record of the back title and they have zero for this. So there is no deed to the cemetery that they could help him find and at that point he went over to the cemetery with the Supervisor and he doesn't know if the Board Members have been there. It's an unusual topography in a sense. You're up on a road to the entrance to the cemetery and then it slopes down to a terrace where the other graves are laid out and Mr. (John) Thomas is correct. Its expanded way beyond the original what he has searched was the original conveyance to the town, which he finds in his deed as an exception that the cemetery is there but they describe it as much smaller than it is now.

Some of the older graves and some of the modern graves, like in the 1980's around the perimeter of the cemetery which is significant, a point he didn't bring up to the Supervisor before tonight. But the law says if it's been used for a public cemetery for 14 years the title of the cemetery is deemed to be on us. So this creates an opportunity and also perhaps a point of disagreement with Mr. Thomas. Mr. Thomas's concern was that he was facing liability if someone went down in there and got themselves hurt. But if it's our cemetery we are the ones that have to worry about it. Under the law if its been used by the public for 14 years then its deemed to be our cemetery and as he has said some of those graves on the perimeters are 1985, so that would established that its been used by the public for more than 14 years and so we would own side to side and there is also the topographical issue of after you get pass the terrace it falls down pretty steeply towards Stony Creek so there is probably a physical limit as to how much more burials will fit in there. He doesn't know if that address's one of Mr. Thomas's concerns or not. The other issue is whether it should be fenced and the Town Law says we do have an obligation to fence it and they use the word fence around, but there is a comptroller's opinion where our obligation is only to fence the front as the bare minimum.

Supervisor Thomas and himself drove around town that day and the Glassbrook Cemetery is partially fenced on one side, the side facing Harrisburg Road and the other side of the church is probably a private burial ground maybe related to the church he doesn't know. If you go further down toward Harrisburg Lake you have the Scofield Cemetery, that's not fenced at all. He would gather that most of the old cemeteries in town probably don't have no fencing.

Attorney Cooper told Supervisor Thomas as Town Attorney that if Mr. Thomas insists we have an obligation to build a fence, at least across the front by the edge of Mr. Thomas's road. The law doesn't say what kind of fence and how it should look, the best thing would be to do a chain link fence or something like that but the town may not have budgeted for that or may not want to spend that kind of money. You could put up a steel post and string some wire between them but it wouldn't add any static value to your property and would probably detract from the quality to the cemetery. So it's up to the Board on what they want to do and what Mr. Thomas wants to insist on a fence or not.

Mr. Thomas stated the main reason the fence was mentioned, he talked to James Densmore from Densmore Funeral Home and he said the only way and also the gentleman that digs the graves. They said the only way that you could basically stop the new graves coming in is to mark your outside boundary's to be permanently marked so that way the outer boundary's have been established and he said that way there would be no more sites for graves. Mr. Densmore said that was the only legal way he could stop it.

Attorney Cooper stated he wouldn't want to offer an opinion with regards to somebody who wants to be buried beside their mom and dad. If they still have lots there. One thing the Supervisor and himself discussed is, it would probably be appropriate for the town to enact some regulations so that we at least know who is being buried in these town cemeteries and require the morticians to get a permit, maybe at an expense that would fund itself, certainly nothing you wouldn't make any money on it but he seems to think that was a good idea. That's in the Board's lap. The Town could declare that some of the cemeteries are closed and only could be used for interments of close relatives he doesn't see any reason why we couldn't do that if we wanted to. That could be folded into the permitting requirements and suggested to the Supervisor that maybe he and some of the Town Board members should be thinking about what would be appropriate regulations and that's one that he hadn't thought of until tonight.

John Thomas stated he wasn't looking to cause any more expense to the town he was going on what James Densmore said and he said until you mark the corners, the outside boundary's of the cemetery you're not going to stop it from expanding because they have no boundary's to stop them. As you go in there the lightest gravestone as you go around the corner the last one right next to the road he did say there was another burial there, on the edge of the road but there is no headstone beside it.

Attorney Cooper stated for the purpose of the audience members that aren't familiar with the Dean Cemetery, when you say the road, basically we're talking about the driveway access we're not talking about Hadley Road. John Thomas stated it's not a town road it's a dirt driveway. Attorney Cooper stated the balls in the Boards lap as to what they want to do at this point. It seems to him it's ironic, it's kind of like maybe the first of the State's unfunded mandate for the town telling us we have to build fences but they don't give use any money to do it. It goes back a long way.

Supervisor Thomas stated he saw in the law that they describe like two or three classes of cemeteries but don't describe what they are; they mention it but don't describe what they are. Attorney Cooper stated other than public and private he must have missed the third one.

Supervisor Thomas stated he didn't find the third one.

Supervisor Thomas stated it's up to the Board, we really don't have to do a title search because if you read the law it already belongs to us. Attorney Cooper stated yes and the other option was to have it surveyed to address Densmore's contention but he thinks we can. We certainly don't want to spend the money to do that and secondly if we pass regulations that say internments have to be permitted and we consider such and such a cemetery built out they would kind of put the burial community on notice that the Dean Cemetery is not to be used for general purposes other than family situations, we wouldn't want to foreclose those.

Attorney Cooper offered to make some calls and maybe come up with some regulations and run it by the Board next month.

Supervisor Thomas stated we should propose at least a permit to somebody that's going to be interned so that we are aware of it and thinks there are probably some other cemeteries that can probably be closed. There are five or six that date back to 100-150 years that aren't being used and maybe we should make sure they aren't used.

Councilman Aldrich asked how many cemeteries are in town. Supervisor Thomas stated he thinks there are 18 that he is aware of. Councilman Aldrich asked how many was functional.

John Thomas stated according to Mr. Densmore any of them that aren't fenced in and the corners aren't marked, it's functional.

Councilman Aldrich stated if the town is the owner it's up to our discretion to put a no vacancy sign or whatever you want to do. If you want to be buried in Stony Creek you have to head to Knowlhurst way, that's the way it has to be because if nobody notifies the town if somebody is going to get buried. We aren't notified until after their buried at these other cemeteries.

Attorney Cooper stated if we enact the regulations and this can be done in his opinion by resolution you don't have to do a local law. We can mail a copy of these regulations to the funeral directors we see in the yellow pages and put them on notice with a letter of explanation that the town board has decided these names of cemeteries are closed and the burials will have to be in the following cemeteries. Then if anybody wants to sue us then that would be their privilege. But that's the way it seems to be logical to proceed.

Supervisor Thomas stated that makes sense otherwise we have 18 cemeteries that are just out there, if somebody wants to go bury somebody they can go at it and we can't have that.

Councilman Aldrich stated we should have some control even if there is a fee for a piece of land or whatever. Councilman Aldrich asked if there was a fee for the one in Knowlhurst. Supervisor Thomas stated he doesn't know about the one on the left hand side of the church. The Town Cemetery there is. Councilman Gill stated if we close them and a relative wants to be buried in one that is closed that means they can't?

Attorney Cooper stated we could do it by saying, to be with a certain degree of kinship by using parent-tellic charts they use in Surrogate Courts. We could go with whatever the board feels appropriate, maybe a first cousin, great grandchild whatever something like that. It wouldn't necessarily have to be a first degree of kinship like a daughter or a son unless you said so. That's your call.

Attorney Cooper will make some calls and inquiries and see if there are other towns that have regulations and will back to the Board with same ideas next month for the Boards review. Supervisor Thomas stated with the cemeteries we have about 1/3 that are fenced, 1/3 that are partial and the other 1/3 are not fenced.

Councilman Aldrich stated when we had the situation at VanAuken Cemetery that is like all used up and nobody knew, there was no headstone here or there but you don't know what's under the ground.

Attorney Cooper stated on a historical note, basically speculation, but there are a lot of tombstones at the Dean Cemetery that are unmarked and some with just one name, which the best guess is these are people who disinterred when they flooded the Great Scanadaga Reservoir and they planted them there. John Thomas stated yes, there is a whole section that have no names on them and that is where they were moved from.

Attorney Cooper stated Pam Morin who attended last months meeting when this came up, she talked about the Wilderness Corridor, she came up to him after the meeting and said there might be some grant money available, because of that circumstance and he doesn't know how you connect the dots from there to there, if we can get her number and call her and follow that threat. She did say Lake Luzerne is getting a grant. Maybe that would give us some money to put toward fencing.

Supervisor Thomas asked if there was any action the Board wanted to take at the Dean Cemetery in particular as to this issue or do we want to wait until we pass regulations. Do we want to put a fence up in the front of it? Councilman Aldrich asked what John Thomas's feeling were on this he was the property owner. John Thomas stated the reason he brought this up, he isn't sure he is just going by what James Densmore told him, until you mark the corners there is nobody stopping anybody, so probably if we set four corners with red flagging until the law takes effect, he would think this should take of it.

Attorney Cooper stated we might also consider some signage at these cemeteries saying that cemetery interments are closed or in the case like Glassbrook that they are required to get a permit for interments so we can double up on the communications to the funeral directors. You have to be sensitive about these things you don't want to have families coming and looking like the town has its heavy hand at regulations. Supervisor Thomas stated and there probably are relatives that want to be buried at Dean Cemetery.

Fire Protection Districts:

Supervisor Thomas stated the Mr. Cronkhite from Lens Lake Rd. told us the town was illegally levying a tax for fire protection on his tax bill. If you read Section 184 of the Town Law it pretty clearly spells out that as long as the town establishes a Fire Protection District that a tax can be levied for fire protection and it's the comptroller's opinion that it needs to be separated out on the tax bill. He thinks this is because the exemptions don't apply to fire protection he isn't 100% positive. Attorney Cooper tried to get information about this himself, he thinks Supervisor Thomas did better then he did because he never found the comptroller's opinion. Supervisor Thomas stated Peter LaGrasse showed it to him.

Attorney Cooper stated there are two classifications for fire districts, one is the Fire Protection District which has fire co's like we have here in town, the other is called a Fire District by itself and that involves Election of Commissioners and becomes a government within the town government, but both of them in defining the tax bills say that the expenses will be taxed as the town bills are taxed, it doesn't say it will be taxed with or be taxed as a town bill. It says in the

same manner as. He thinks this is support for the argument that they would be separated out on the tax bills and everybody he talked to says the issue is the exemption. That somebody who has an exemption or Senior Citizens Exemption would prefer to see that on the general taxes because they would be paying less taxes out of pocket because those bills themselves are not subject to the exemption and to show you what a novel question this is. He contacted the guy that should know, the Attorney for the Office of the Real Property Tax Service for the State of New York, Joe Gerberg in Albany and he couldn't help him at all. He did contact Peter and he looked into it.

Assessor LaGrasse stated it's perfectly clear, we are doing the right thing. The Fire Protection District, which we are, those taxes all associated with taxes occurred with running the fire co are levied separately on the same bill. That's the law.

Supervisor Thomas stated then the Town contracts with the fire co. so they are a separate entity, but the town contracts with them and the town doesn't necessarily have to contract with the fire co, they can contract with another qualified fire co., but that's not going to happen anyways.

Attorney Cooper stated we have an obligation to furnish fire protection to the citizens of the community and this is the State Law's idea of how you go about doing it, it isn't just the contract cost it factors in the pensions for the volunteer firemen and other expenses that are associated. They are all piled in that together then they use the same assessment formula that they would do to determine the general tax levy and you end up with fractions and there it is on your bill. So you know what you paying for your fire services.

Supervisor Thomas stated he read another comptroller's opinion where the comptroller also said that even is it's a volunteer fire co that the town contracts with, that the volunteers whether they are paid or unpaid are considered employees of the town. That must be the authority that gives us the authority to pay workers compensation benefits because we pay the workers compensation for the fire co.

Attorney Cooper stated he knows towns have been sued. When a volunteer fireman is on his way to a fire and causes an accident, he can't tell you with what success, but he believes it would be covered under our insurance protection.

Supervisor Thomas stated he wanted to clear that up because he was quite adamant that we were doing something illegal.

Tires on Mr. Schultz's property:

Supervisor Thomas reported Mr. Schultz did remove these. There were 217 tires and he paid \$434.00 to dispose of them at the landfill.

Committee reports:

Youth:

Supervisor Thomas reported the Youth Director has submitted her fall and winter program schedule.

FEMA:

Supervisor Thomas and Supt. Bradley attended an applicants meeting last Thursday morning on FEMA for the Hurricane, Topical Storm Irene. FEMA assistance as most everyone knows, Warren County is part of the Presidential Declaration funding. He files an application on behalf of the town.

The next step is what they call a kick off meeting where they come here at the town and we should have the paperwork together and what projects are either done or what they are going to do. If it's under a certain threshold, \$63,900.00, they will pretty much pay for it, if its over that then we have to go through more stuff and it becomes a project and will have to make draws and things like that.

We had at least three roads that suffered damage on the 28th of August, with major damage. Some of the other roads suffered shoulder washouts and lost pavement here and there. We will be looking for dollars from FEMA. The Federal Government reimburses 75%; the other 25% is spilt between the local and the State, which will be 12½% each. So whatever becomes eligible for funding will be reimbursed at 87½%. Councilman Aldrich stated the other 12½% is ours. Supervisor Thomas stated yes.

Supervisor Thomas reported that anytime the fire dept. was out that day, at the firehouse, any calls they had or calls they went on are eligible for funding and could be reimbursed.

Councilman Ross stated they went out that day. John Thomas stated yes and asked if they wanted man-hours and what they are looking for. Supervisor Thomas stated like man-hours, equipment, fuel, and food anything like that.

Supervisor Thomas stated he wasn't sure when they would be here and they weren't either, it could be a couple weeks or could be a month.

New Business:

Bed tax request:

Stony Creek Fire Co. requested \$1980.00 for a car show to be held at the recreation field October 8th, 2011 with a rain date on October 15th, 2011. All proceeds will go toward the Firemen's Christmas Party.

103-11. A resolution was made by Supervisor Thomas seconded by Councilman Aldrich authorizing the use of the recreation field and the expenditure of bed tax monies in the amount of \$1980.00 to the Stony Creek Fire Co. for a car show October 8th, 2011 with a rain date of October 15th, 2011, occupancy funds will be used for giveaways, trophies for the cars, prizes and advertising. All proceeds from the event will be used for the Stony Creek Fire Co's. Christmas Party and presents for the kids. Roll call vote, Councilman Aldrich-Yes, Councilman Ross-Abstained, Councilman Liebl-Yes, Councilman Gill-Yes, Supervisor Thomas-Yes.

Adirondack Park Local Government Review Board:

Proposed agreement:

A copy of the letter sent to Supervisor Thomas from Fred Monroe was given to the Town Board. They have request funding in the amount of \$300.00 for a year and wrote up an agreement. The Agreement will be between the Adirondack Park Local Government Review Board and the Town of Stony Creek. Supervisor Thomas read the resolution.

Councilman Ross asked if we were in any kind of agreement with them. Supervisor Thomas stated no. Last year he thinks we funded \$250.00 but didn't have an agreement. This maybe something their lawyers told them to do.

Councilman Ross asked if this had Attorney Coopers blessing and approval. Supervisor Thomas stated he didn't know.

Attorney Cooper stated he didn't see it until tonight but will say he has a level of respect for Fred Monroe, which is difficult to tarnish. He thinks he has done an outstanding job for the County when he was the Chairman for the Board of Supervisors. As association to the Adirondack Park Local Government Review Board he really brought a level of professionalism and a positive direction. To implement the statutory skim to that, to advise and assist the APA he thinks they have been successful in getting the APA to modify some of the policies, clarify some of their policies and thinks he has done a heck of a job. So from a political stand point he thinks it's a wise thing to do. From a legal stand point the Local Government Review Board has been funded by Warren County since its acceptance and all the county's chip in, they decide how much they want to do, so it would follow that the towns in the county would have as a municipal sub-division of the county and would have the right to do that as well. He might add when he was younger he sued the Adirondack Park Local Review Board when Tony Delia was the director and one of the arguments he made in court was that the county had no right to give them money and the judge struck it down. He won the case but not that part of it. So his read on it is yes we do have a right to do it and for what it's worth, he's not elected by anybody, he thinks it's a good idea.

Supervisor Thomas stated what brought this about was the last year when Mr. Paterson was Governor they cut the funding to the Local Government Review Board. The county has funded them but the State also funded them and that basically left them high and dry short of money to operate with, that's why they went to the towns.

Attorney Cooper stated according to the newspaper most of the budget goes to pay Fred a salary and to pay his wife as his Secretary, Supervisor Thomas stated yes, Attorney Cooper stated considering he has to drive to Ray Brook and go to various counties of the Adirondacks to explain what the Boards doing to their Board of Supervisors to get money from them, he assumes his salary is used in part to offset those expenses in addition to his skill of his position.

104-11. A resolution was made by Councilman Ross seconded by Councilman Gill Authorizing the supervisor to sign the Agreement between the Town of Stony Creek and the Adirondack Government Review Board:

This Agreement made September 20th, 2011 between the Town of Stony Creek hereinafter referred to as the Town, and the Adirondack Park Local Government Review Board, a Board duly organized and existing pursuant to the provisions of §803-a of the Executive Law of the State of New York, acting by and through its duly appointed members, hereinafter referred to as the Review Board.

WHEREAS, the Review Board was created by the Legislatures of the State of New York and is composed of representatives appointed by the County Legislatures of the counties lying in whole or in part within the Adirondack Park; and

WHEREAS, the Legislature of the State of New York has provided only partial funding for the Review Board to perform its statutory functions as outlined in Executive Law §803-a, and recently reduced that funding by 53%, and

WHEREAS, the Town has authorized an appropriation in the sum of Three Hundred Dollars (\$300.00) in support of the work of the Review Board in representing the interests of the local governments of the Adirondacks; and

Now therefore, it is agreed as follows:

1. The Town agrees to pay to the Review Board the sum of Three Hundred Dollars (\$300.00) for the services of the Review Board in representing the town in matters relating to the Adirondack Park.
 2. The Review Board agrees to provide to the Town the benefits of its services, including but not limited to, attendance at meetings of the Adirondack Park Agency, attendance and participation at public hearings conducted by the Adirondack Park Agency on projects under review by said agency, periodic reports on the activities of the Adirondack Park Agency to the Supervisor of the Town, especially as such activities affect the residents of the town and generally to report on the administration and enforcement of the Land Use and Development Plan set forth in the Executive Law of the State of New York.
- Roll call vote, all in favor.

Budget transfer:

105-11. A resolution was made by Councilman Ross seconded by Councilman Aldrich authorizing the following budget transfer:

Debit Appropriated Fund Balance in the amount of \$11,181.51.

Credit DA5112.2 Machinery Equipment in the amount of \$7,477.86.

Credit DA5142.4 Snow Removal in the amount of \$2,414.32.

Credit DA5110.4 General Repairs in the amount of \$489.33.

Roll call vote, all in favor.

Supervisor Thomas reported a meeting will be held on October 4th, 2011 to review the 2012 town budget.

From the Floor:

Robert Kopec-Middletown NY: regarding his property at 79 VanAuken Road.

Mr. Kopec gave a letter to the town board to address the problems with work that is being done on his property. Five or six years the road department has been taking a foot or more of his property to make the road wider. Trees have been removed or permanently damaged. The road department has shut down 600 feet of the VanAuken stream on his property that feeds his well and is now running dry. Boulders and debris have been pushed in the stream on his property from the ravine that was dug out on the opposite side of the road. Recently in making the town truck turnaround on his property 20-30 trees have been removed without permission. In speaking with Supt Bradley about a possible two-way stream reroute to help the runoff, concerns about his well and the removal of trees for the truck turn around. Supt. Bradley told him that he didn't have to tell him anything and if he didn't like it he would pile 10 feet of snow in his driveway and also stated he would kick his ass and burn down his cabin.

Supt. Bradley stated he is exaggerating a little bit, he was hostile and getting in his face. He would like to response to some of the accusations. He tried explaining to him the creek has made its own way down through there, we expanded it, we made it bigger so the water will go straight down. The rocks are put in there to support two wing walls that are almost gone on that wall and when we get a chance, we get everything opened so everyone else can at least drive out of their driveway. He talked with Supervisor Thomas and was putting a 24 ft. culvert in there and now the water has washed it down deeper. It was a storm issue, the stream was made by itself.

Attorney Cooper stated Mr. Kopec did call him at his office and complained about this. When Attorney Cooper came up to look at the Dean Cemetery he asked the Supervisor if he could accompany him up to look at this situation up at Mr. Kopec's property and he did look at it. He did observe that there was water running through the culvert on his side of the road at that time, the day he was there and that was between storms. That was between Hurricane Irene and Lee. So it wasn't an unusual event we were witnessing when we were there and he can tell you as a lawyer that Supt. Bradley is right in this sense, the town board can't fire him or hire him because he is elected by the people, your remedy is if you don't like the gentleman as a personality is to make it known in the community so when he runs for re-election people are persuaded his opponent would be a better person for the job. We can't change the way the State Law was written. The only control we have over the Highway Superintendent is control over his budget. You might come to the budget meeting and make a complaint to the town board at that time and say this is how I feel about it that is your right.

Mr. Kopec stated you have no feel of how the road is planned.

Attorney Cooper stated going down the Northway, each lane is 14-15 feet wide and the Northway is wide. Now the town owns three-rods as its right of way, which is 49 and a fraction feet and you would measure that from the center of the road 25 feet either way, that's why you have the 25 ft. idea in mind. So we own 50 feet of road there and how that actual measures out as far as your road and the ditches are concerned he wouldn't know until he took a tape up there and did it. We are getting close to the 50 ft. if we're not over it. It is pretty wide and looks wider than your average country lane but after a few years after a little dust has settled in and leaves and stuff maybe it won't be so stark in appearance for him.

The Highway Superintendent has an obligation to the community to make sure that the nature water courses drain and he say there was a natural water course on the other side of the road and yes he opened it up and widened it to prevent a washout of that road if there is another storm event like we've been having in recent years, that's a judgment he has to make as Highway Supt. it doesn't mean he has to effect your property rights and if you feel your property rights have been effected then your remedy is to go to a lawyer because we can't tell him how to do his job he has to use judgment, if he uses it poorly the remedy for the public is the election process.

Mr. Kopec stated he can block off the bridges without anybody telling one way or the other and he can shut off his 600 ft. of stream without any recourse whatsoever?

Attorney Cooper stated he won't answer his hypothetical question, you would be better off sitting in front of an attorney to ask this question. All he can say is factually when he went up there that day there was water running through the culvert. It wasn't gushing through there but there was certainly what you would expect for a brook. He doesn't remember if it was running down the main ditch. Supervisor Thomas stated yes, there was water going in both directions. Attorney Cooper stated it isn't like he dammed it off. There are some rocks in there that might inhabit a free flow of water but what water was going through was establishing a stream and in high water in a stream event. He thinks it would be pouring through both sides the way it is now. Mr. Kopec stated it would pour down the road and rip the whole road out. It didn't come on his side at all, he would have thought two ways to let the watercourse be better than the one they put in now being ripped out now every time it rains.

Attorney Cooper stated that's not what he saw. Maybe he's not qualified because he doesn't have an engineering degree but he did see water going in both directions when he was there.

Mr. Kopec stated there might have been a little water coming through. If you went through after the rainstorm you could see that it ripped out another 10 feet of road on the left side just the

rainstorm we had. So now do we go by what the river he made on the other side from that edge of the road to his property, you will be taking another 12 feet if that's the way you're going to go.

Supt. Bradley stated it did take a little more but if we didn't have that in there it would have been the same exact disaster, that water was raging through there complete full to that ditch so if we didn't put that in there that whole road would have been gone again without question.

If that was opened and the bridge was left as it was it would have ripped the whole road apart again, now we lost a little bit of the road because we didn't get a chance to finish it because we're jumping around job to job. We weren't expecting this flood to come, so we did what we had to do and moved on to the next project. We will finish it, we will put boulders in there that will not make the road come apart and his attention is, he hopes the water stays going that way he doesn't think we should pay \$150,000.00 a bridge to maintain those two bridges. He would like to see them gone and have two culverts in there.

Mr. Kopec's Son stated what about all the work was done on the bridge last year. You spent a lot of money on the bridge by his house and then just closed it off. Supt. Bradley stated the storm took a different route, which made it easier for the town.

Mr. Kopec stated the route you made not the storm, took a new route, you put big rocks in there. Supt. Bradley stated he has pictures of it. Mr. Kopec stated you put big rocks in there and closed off the bridge, you have rocks in there the half size of my car.

Supt. Bradley stated they were put in there to shore up the shortening.

Mr. Kopec stated there are boulders in the first culvert; there were never boulders there. That stream was all right for 100 years but to him it was a big flood but it didn't shut off a giant boulder.

Supt. Bradley stated we did put giant boulders in there because it undermined, the wing walls of the bridge was undermined so we put the rocks in there to help stabilize it. We could not fix that bridge. He did not have \$175,000.00 or whatever it may cost to go in there and rip out that bridge in the middle of a crisis mind you and fix the bridge to give satisfaction.

Mr. Kopec stated we could wait for the crisis to go by.

Supt. Bradley stated we aren't done with it. Mr. Kopec stated it is flood area right? You're just going to get paid for it anyways.

Supt. Bradley and Supervisor Thomas stated no. Supervisor Thomas stated that's not true. Mr. Kopec stated if it got ripped off in Hurricane Irene. Supt. Bradley just said it got undermined, how did it get undermined? Supervisor Thomas stated on May 28th not August 28th.

Attorney Cooper stated we have had three flood events up here one in May, Hurricane Irene and a Tropical Storm. Mr. Kopec stated that isn't a state Emergency?

Supervisor Thomas stated no, it was not declared an emergency from the Federal Government. So we are not eligible for funding for that storm that we had in May and we had considerable more damage back in May then we had with Irene. The town will not receive one cent of funding for that. Supt. Bradley stated yes we did repair that bridge last year. He can't foresee we are going to have floods and can foresee it isn't going to happen again. Those two bridges won't wash out again not in his lifetime or the town board's lifetime.

Mr. Kopec stated actually they never washed out they just washed around.

Supt. Bradley stated the road is a little it wider, when we dug it out and shortened it up, buy the time you pushed the gravel he is sure there are spots a little wider.

Mr. Kopec showed the town board pictures of his property.

Supervisor Thomas asked what the solution is. Mr. Kopec stated what is the solution can we do anything about this or is it a car box for a road guy who keeps pushing whatever he wants.

Mr. Kopec's son stated do we take it upon ourselves to put the stream on our side, because we can do that. We just need water to come through the old stream. Mr. Kopec stated basically he has to go to a lawyer to settle this, is that the way it is?

Mr. Kopec's son stated basically we need the water coming through the stream so if we need to open it up ourselves we can do it. We just don't want it blocked afterwards.

Supt. Bradley stated that's the intention, he plans on putting a culvert in there or for now open up the rocks.

Supervisor Thomas asked if this would solve the problem, if we put water running down the other side.

Supt Bradley stated the turn out he is talking about is by his place, it has always been a turn around there, it hadn't probably got expanded, we dumped stone in there and probably got pushed out, when you grade a road, the road isn't going to stay the same unless you have trees, he has trees there, they have always stayed there. There have been trees that tipped over and they have cut them. The next turn around we're talking about, where he is cutting trees is up by Joe L'Episcopo's old place where the road narrows pass the bridge. That's where we have to make a turn around so we obviously have to widen that out so we can have a place to turn around because there is now a gate where the town road ends within 20 feet. If the road goes up 20 feet it doesn't make a difference we still need that much room to turn around.

Supervisor Thomas asked if we can turn around within the 50 feet. Supt. Bradley stated he is hoping so it's going to be tough. Supervisor Thomas stated if we can't we are going to have to get an easement. Supt. Bradley stated we will have to do something we aren't going to cut trees beyond 50 feet.

Mr. Kopec asked how come the trees were cut on his side and nothing on the other side. Supt. Bradley stated we aren't done yet. We have been out straight, and we haven't had a point to do that.

Supt. Bradley stated the best thing is to have Supervisor Thomas and whoever else wants to go up there and tell him what he wants done up there. We either make the road turn around in on his property which is an option if he will let us do it but then we have to go through the gate and there is a problem with the size of the gate and won't be about to keep opening the gate in the winter and when we pile snow against it we won't be able to close it. So we either put the gate, and like Supervisor Thomas stated he doesn't want to put money on private property he would rather keep it on what we can do within our right of way, What he is saying where you r going to make the turn around right at the gate, what he is saying we are going to have to cut those trees and we will be within out 50 feet right of way, it's going to be tough to turn around, we are going to have to cut trees on the other side of the road.

Attorney Cooper stated if this spins out of control technically, if you could prove the town took more then its 50 feet of right of way, took your land, affected your reapiane right of somebody who owns beside a brook and so forth, maybe you have a Cause of Action. He doesn't know factually how that works out but the other side is if you monkey around with the brook and it causes, according to the Highway Supt., and it causes, the next time a serious event causes a washout you could be responsible for negligence behavior that caused the lost of the town road and cost of repairing it. So it could go both ways.

Mr. Kopec's son stated as far as what they did across the street from them, they didn't need to get a DEC permit to move the stream around?

Attorney Cooper stated the Highway Supt. has some emergency authority to enter private property to open drainage and stuff in storm event situations. He doesn't know if this was the applical of the situation where we went beyond a period of time where you had an actual emergency and he was involved in repairs. So he can't answer that question other then to say possibly he had a right to do it even if he needed a DEC permit. He doesn't know all the law. If you want to inquire with DEC whether he needed a permit get on the phone and ask the people there.

Attorney Cooper stated it's a possibility the town committee on highways will go up there with Supt. Bradley and look the situation over in light of your complaint they may elect that they may not nobody has elected him to do anything.

Mr. Kopec's Son asked if there was a law, if there is any trees over six years old, He read in the minutes, that if they cut it down you have to consult with them first, if it's been there for 60 years. Attorney Cooper stated that was news to him. There was a citizen that complained about taking trees down in the 50-foot right of way, but the statue sited had been repealed and that dealt with fruit trees.

Mr. Kopec's Son stated the road by use, whatever it is if they hadn't cut the tree in six years and there are six rings on that tree they aren't allowed to cut that tree legally.

Attorney Cooper stated there is a legal opinion from a court in another area in the State that is not presidential for our area here a lower level court that says the town has the right to use a portion of the road that has been used and its not 50 feet wide, but we are not required to follow that in this area, there is a specific town law that's 50 feet or three-rods and that's what we have done consistently as a board for about 20 years he has served on the board and assumes to continue to do that. The authority you may be referring to would be for something in Westchester County or Long Island.

Mr. Kopec's son stated he read it in one of the minutes having to do with Gustave Kanasis. Attorney Cooper stated he threatened to sue the town but nothing became of that as far as he knows.

Mr. LaGrasse stated it's his opinion, he believes that the idea the highway by use, being the trees not disturbed within six years that it applies state wide. It's interesting that Attorney Cooper is saying might refer to another Judicial District and not our District. He can't comment on that without research. He doesn't know if that's the case or not. It has always been his contention that the 50 foot right of way does not take property away because otherwise that law would have been taken, by the act of that law taken what would have been a 3-rod road by use and made it into a 3-rod road just simply taking that property without compensation and he doesn't think that's the way the law intended to be. He thinks the law intended as a goal that all town roads should be 3-rods and that is what it says. But in order to do that he thinks you have to compensate the owner if you cut these trees that are more then 6-10 years old. That is his interpretation of it. As a matter an incident that happened on a county road. The county wanted to cut trees that would have destroyed a very modest home and they stopped. Raising that complaint the county did not cut those trees. They were all marked to cut these big two foot diameter and very few in the road and would have destroyed his place and was indeed widening that road to the 50-feet if they did that. When the objection was raised the county did not do it and he believes they understood that road by use really means road by use and then the 50-feet is a statutory thing that must be compensated or it would be a taking without compensation.

Supt. Bradley stated or the county could have stopped just for the fact that maybe they didn't understand that the person wanted those trees, just like we don't understand. We cut a very small

white pine trying to do a favor so she could see to get out of her road and got yelled at for doing it. Maybe the county stated it isn't worth it.

Mr. Kopec's Son stated wouldn't it be nice practice to inform us. You know how to send out a tax bill, can't you send a letter saying. Supt. Bradley stated when that storm hit we had no intentions to do anything up there until the storm hit.

Councilman Aldrich stated why doesn't the highway committee or a couple board members get together and go out and see this, what we have and hash it out. Supervisor Thomas agreed.

Virginia Lorrain asked if Stanley Ross was running for re-elections as Councilman again this year. Councilman Ross stated yes he is running.

A motion was made by Councilman Ross seconded by Councilman Aldrich to adjourn the meeting at 8:27 PM. All in favor, motion carried.

Respectfully submitted

Susan Harrington
Town Clerk