

TOWN OF CONCORD TOWN BOARD MEETING  
7:00 p.m.

September 13, 2018

MEETING CALLED TO ORDER BY CLYDE M. DRAKE, SUPERVISOR

PRESENT: CLYDE M. DRAKE, SUPERVISOR  
JAMES M. KREZMIEN, COUNCILMAN  
KENNETH D. ZITTEL, COUNCILMAN  
WILLIAM F. SNYDER, III, COUNCILMAN  
PHILIP DROZD, COUNCILMAN

ALSO PRESENT: DARLENE G. SCHWEIKERT, Town Clerk  
DENNIS DAINS, Hwy Supt.  
BRIAN F. ATTEA, Town Attorney  
CAROLYN ROBINSON, Dog Control Officer  
GEORGE DONHAUSER, Planning Board  
KAREN HOWARD, Senator Gallivan's Office

RICH PLACE, Springville Times COLLEEN MAHONEY, Springville Journal  
MARY JEAN MIESS JOHN MIESS

INVOCATION DELIVERED BY TOWN CLERK SCHWEIKERT

PLEDGE TO THE FLAG LED BY SUPERVISOR DRAKE

ITEM #1. APPROVAL OF MINUTES

a) Work Session – 8/9/18 – Motion by Councilman Krezmien, seconded by Councilman Zittel, to approve the minutes as presented. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

b) Town Board Meeting – 8/9/2018 – Motion by Councilman Krezmien, seconded by Councilman Zittel, to approve the minutes as presented. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

ITEM #2. PUBLIC COMMENT

Supervisor Drake opened the floor for Public Comment.

No one wished to address the Board. Motion by Councilman Krezmien, seconded by Councilman Zittel, to close Public Comment. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

ITEM #3. MONTHLY REPORTS

Motion by Councilman Krezmien, seconded by Councilman Snyder, to approve the Monthly Reports, Items a-g. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake voting aye. Carried.

- a) Code Enforcement Officer – August 2018
- b) Dog Control Officer – August 2018
- c) Town Supervisor Report – July 2018
- d) Town Clerk Report – August 2018
- e) Judge Gibbin Report – July 2018
- f) Judge Frank Report – July 2018
- g) Van Report – August 2018
- h) Highway Report – Hwy Supt Dains reviewed his filed report. Hwy Supt Dains discussed the following with the Board:

(1) Hwy Supt Dains noted that the only addition to his report is that Suit-

Kote came out and finished crack sealing Pritchard, Morton, Hoffman, West Hoffman, and South Hoffman Roads. All the crack sealing has been done for the year. Ninety-nine percent of the major expenditures have been completed.

Motion by Councilman Krezmien, seconded by Councilman Zittel, to accept the Highway Report. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

i) Fire Department Report – Councilman Drozd, board liaison to the Springville Vol Fire Co., reported that the Springville Fire Company was researching grants with the USRDA. The first round of paperwork was submitted and now waiting for the Springville Board of Directors to compile the second round of paperwork. All is good at this point; it won't be done this year but the fire company is aware that no work will start this year because of the possibility of grant money. It is worth it to wait.

Supervisor Drake had a question for Hwy Supt Dains. He had attended a breakfast meeting this morning with Drescher & Malecki, CPA and one of the concerns was the cancer new law coming up; the new washing stations needed. Hwy Supt Dains noted that a lot has come down since 9/11, along with the cancer benefits for the firefighters. FASNY (Fire Association State of New York) has a very good editorial on where it is at with the governor. The law started out with the paid firefighters getting the cancer benefit. Now there is lobbying their representatives to get volunteers included in that also. Even though the governor has signed it, there is legal work going on behind the scenes for the volunteers to get the same coverage; volunteers deal with it on a daily basis too. The legislation for the cancer funding has been passed but they want a little bit more for the volunteers and a little bit more itemized as to the amounts of the coverage that firefighters would receive. Tim Hannigan is now the legal liaison for the FASNY who worked with the Town on getting Mercy to the Town. Supervisor Drake asked if this was just for interior firefighters and questioned who was qualified as interior. Hwy Supt Dains noted that firefighters need to be certified interior and wear a scott pack, then you would be included. Supervisor Drake asked Hwy Supt Dains and Councilman Drozd to keep the Board advised of the progress.

Motion by Councilman Krezmien, seconded by Councilman Zittel, to accept the Fire Department Report. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

ITEM #4: OLD BUSINESS

There was nothing for Old Business.

ITEM #5: NEW BUSINESS

a) **Audit of the Bills** – Supervisor Drake stated that these bills were audited by Councilman Snyder, and reviewed by the Board.

General Fund A, abstract 9, bills 951-1044 & 1109; \$58,910.07  
 General Fund B, abstract 9, bills 1045-1053; \$352,501.23  
 Library Fund, abstract 9, bill 1054; \$389.29  
 Fire Protection, abstract 9, NONE  
 Joint Van, abstract 9, bills 1055-1057; \$945.01  
 Joint Youth, abstract 9, bills 1058-1060; \$31,946.81  
 Craneridge Lighting, abstract 9, bills 1061-1062; \$3,362.80  
 Craneridge Sewer, abstract 9, bills 1063-1073; \$15,916.36  
 Highway DA, abstract 9, NONE  
 Highway DB, abstract 9, bills 1074-1095; \$50,544.70  
 Kissing Bridge Water, abstract 9, bills 1096-1100; \$318.53  
 Kissing Bridge Sewer, abstract 9, bills 1101-1106; \$14,335.66  
 Trevett Rd. Water, abstract 9, bill 1107; \$2,358.00  
 Cattaraugus St. Water, abstract 9, bill 1108; \$590.86  
 Trust & Agency, abstract 9, NONE  
 Capital (HA) Craneridge Sewer, abstract 9, NONE

Capital (HB) Land, abstract 9, NONE  
 Capital (HD) Catt St, abstract 9, NONE  
 Capital (HE) Sr. Ctr, abstract 9, NONE  
 Capital (HF) Hwy Equip, abstract 9, NONE  
 Capital (HG) Waste Study, abstract 9, NONE

Motion by Councilman Snyder, seconded by Councilman Krezmien, to approve the bills as presented. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

**b) Comprehensive Plan** – Supervisor Drake advised that the Public Hearing was held earlier this evening so that the Town could move forward with the SEQR process. There were a couple valid points brought up so the Committee will meet again to work their way through those comments. The Board will not be voting on that tonight but ultimately what is in that Plan rests with the Board members. Supervisor Drake asked the Board members to review the Comprehensive Plan for their comments in hopes that we can have the Committee meet once. Motion by Councilman Krezmien, seconded by Councilman Zittel, to table the Comprehensive Plan. Councilmen Krezmien, Drake, Zittel & Snyder; Supervisor Drake, voting aye. Carried.

**c) Set Public Hearing date re: 2019 Preliminary Budget** - Supervisor Drake advised that a Special Town Board Meeting needs to be scheduled for the presentation of the 2019 Budget. Motion by Councilman Krezmien, seconded by Councilman Zittel, to set the Special Town Board Meeting Tuesday, October 9, 2018 at 10:00 a.m. Councilmen Krezmien, Drake, Zittel & Snyder; Supervisor Drake, voting aye. Carried.

Supervisor Drake asked the Board to set the Public Hearing for Thursday, October 11, 2018 at 6:15 p.m. Motion by Councilman Krezmien, seconded by Councilman Zittel, to set the Public Hearing for Thursday, October 11, 2018 at 6:15 p.m. for the 2019 Budget. Councilmen Krezmien, Drake, Zittel & Snyder; Supervisor Drake, voting aye. Carried. Town Clerk Schweikert will put the notice of the meeting on the signboard at the Town Hall and also the Town's website.

**d) Set Public Hearing date re CDBG:** Supervisor Drake asked the Board to set the Public Hearing for Thursday, October 11, 2018 at 6:00 p.m. Supervisor Drake explained that this is Federal Community Development Funds. The Town has to put grants into this and last year the Town did receive the grant to put the generator in the Senior Center. The purpose of this hearing is for citizens to express community development and housing needs and to discuss possible projects which would benefit low and moderate income peoples in the Town. Motion by Councilman Zittel, seconded by Councilman Drake, to set the Public Hearing for the Community Development Block Grant for Thursday, October 11, 2018 at 6:00 p.m. Councilmen Krezmien, Drake, Zittel & Snyder; Supervisor Eppolito, voting aye. Carried. Town Clerk Schweikert will put the notice of the meeting on the signboard at the Town Hall and also the Town's website.

**e) Charter Communications Franchise Agreement** – The Board has been working on this Agreement over the last few months. Councilman Snyder advised Supervisor Drake and Town Attorney Attea that under Section 6.3 New Development Underground there is language about “open trenches”. Councilman Snyder noted that there are other methods of getting the wires to the house without open trenching. There was discussion about adding or any other means to the language: “In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching or any other means to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development...” Supervisor Drake will go back to Charter Communications with this change but the Town would like to get this Agreement approved. Supervisor Drake asked the Board to vote tonight with that change and if the Town can get that change done, then all he would have to do is sign the Agreement. Town Attorney Attea added that the wording “open trenching” appears in at least one other spot in the paragraph but the whole purpose of the amendment would be to cover any potential means of underground installation whether it be open trenching or otherwise. Town Attorney

Attea will come up with the language but approval tonight would be based on the understanding that it would be approved subject to Charter Communication accepting those agreements. Councilman Drozd asked if Charter Communications were going to put those residences that were skipped included in the service area. Supervisor Drake noted that last he had heard from Mark Meyerhofer, he was checking with their engineers to see if it could be. The reason Charter Communications pushed back so hard on this was because they were not getting credit for doing any extra houses. Motion by Councilman Snyder, seconded by Councilman Krezmien, to approve the Charter Communication Franchise Agreement subject to their amending based on the earlier discussion. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

f) **Agricultural District Annual Enrollment Process** - Supervisor Drake read the Agricultural District Notice of Open Enrollment into the Minutes. This Notice is also posted in the Bulletin Board at the Town Hall and the town's website.

#### PUBLIC NOTICE

Per New York State Agriculture and Markets Law Section 303-b, the Erie County Legislature designated September 1 through September 30 as the annual thirty-day period during which landowners may submit requests to include predominantly viable agricultural land into an existing certified agricultural district.

Copies of the application form have been provided to Municipal Clerk's, Assessors and Chief Elected Officials for distribution to interested landowners. The application is also available on the DEP website at [www.erie.gov/environment](http://www.erie.gov/environment).

The Erie County Department of Environment and Planning will accept applications from September 1 through September 30. Any questions on this process should be directed to the Erie County Department of Environment and Planning.

A public hearing will also be scheduled at a later date to consider all inclusion requests and the recommendations of the Erie County Agricultural and Farmland Protection Board.

Contact Information:  
 Elias Reden, Planner  
 Erie County Environment & Planning  
 95 Franklin Street, 10<sup>th</sup> Floor  
 Buffalo, NY 14202  
 Phone: (716) 858-1911  
 Fax: (716) 858-7248  
 Email: [agriculture@erie.gov](mailto:agriculture@erie.gov)

g) **Cleaner at the Senior Center** - Supervisor Drake advised the members that there was a situation at the Senior Center where we didn't feel the employee hired a couple months ago had passed his probation. We wanted to extend that probation period and the employee did not like that idea and quit the position. Supervisor Drake asked for a motion to accept the resignation of Brian Gaske from the position of part-time cleaner at the Senior Center effective September 11, 2018. Motion by Councilman Krezmien, seconded by Councilman Drozd, to accept the resignation of Brian Gaske. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

Supervisor Drake advised that when the Town interviewed last time there was one company that interviewed and two people from SASI. The Town hired the one applicant from SASI who lived in our Town. Supervisor Drake noted that there has been discussion with SASI and they feel that the second SASI applicant can do this job. He lives in Arcade but has a driver's license. Supervisor Drake asked for a motion to appoint Kirk Engnath to the position of part-time cleaner at the Senior Center effective September 13, 2018 with a starting wage of \$10.40 per hour increasing to \$11.10 on January 1, 2019 with the minimum wage increase during the six month probationary period. After a successful six month probationary period the rate would increase to

\$11.40 per hour. This motion would be subject to an adjustment to review to make sure all pay rates are consistent with current state law as to minimum wage. Due to the increased wage levels, the 20% increase listed in the Town's Employee Manual will not apply. Supervisor Drake will be working on revisions of the Town's Employee Manual. There was discussion as to how the minimum wage law affects other Town employees. Motion by Councilman Krezmien, seconded by Councilman Zittel, to appoint Kirk Engnath to the position of part-time cleaner at the Senior Center effective September 13, 2018 at the starting wage of \$10.40 per hour. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

ITEM 6. EXECUTIVE SESSION

Motion by Councilman Zittel, seconded by Councilman Drozd, to go into Executive Session at 7:29 p.m. for the purpose of proposed litigation. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried. Supervisor Drake invited Hwy Supt Dains into this Executive Session.

Motion by Councilman Krezmien, seconded by Councilman Zittel, to come out of Executive Session at 7:55 p.m. Councilmen Krezmien, Zittel, Snyder & Drozd; Supervisor Drake, voting aye. Carried.

ITEM #7. CONSENT AGENDA

There was nothing for Consent Agenda

ITEM #8. COUNCILMAN NOTES

a) Councilman Drozd, Hulbert Library liaison, advised that

(1) The Library Custodian put in his notice in that he would be resigning. He will stay on until a replacement is found. Erie County will pay for this position. This is an 8-10 hour/week position depending upon the season which would include lawn mowing, snow removal in the winter. If the Board knows of any interested applicants, let Councilman Drozd know.

(2) Fall hours started at the library this month.

(3) The library has submitted a request to put money in the reserve account for repaving the parking lot, parking lot bumpers. Discussed parking lot bumpers and how difficult it is to plow the parking area where they are installed.

b) Supervisor Drake advised the Board that yesterday he went and toured the Ashford West Valley site. It was an informative tour. Councilman Snyder has toured this site in the past.

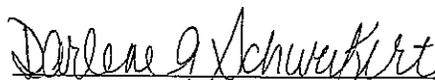
c) Supervisor Drake attended a breakfast meeting held by Drescher & Malecki, CPA. New sexual harassment laws will be going into effect in October. The Town will need to revise the Town policy. Everyone will need to be trained including volunteers, Planning Board members, anybody involved with the Town.

d) Supervisor Drake will be in Buffalo on Monday attending a PERMA conference.

ITEM #9. MOTION TO ADJOURN

Motion by Councilman Krezmien, seconded by Councilman Zittel, and passed unanimously, to adjourn the meeting at 7:58 p.m. in memory of:

Kenton L. Hoppel  
Robert K. Botsford  
William J. Grube

  
\_\_\_\_\_  
Darlene G. Schweikert  
Town Clerk





13870 Taylor Hollow Rd.  
Collins, NY 14034  
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www.gernatt.com

September 13, 2018

Clyde M. Drake, Town Supervisor  
Town of Concord  
Franklin Street  
Springville, NY 14141

Re: Town of Concord Comprehensive Plan 2018;

Dear Supervisor Drake,

As an owner of several properties in the Town of Concord and the operator of mining operations as well, the Gernatt Family of Companies ("Gernatt") submits the following comments on the current draft version of the proposed Comprehensive Plan ("Draft Plan") for the Town of Concord as prepared by Wendel, dated July 9, 2018:

- 1.) Under "Industrial Zoning Districts" on page 58 of the Draft Plan, in the description of the M-R Mining Reclamation Zoning District, the following two sentences are found:

"The 59 acre Gernatt Property off Benz Drive is not actively mined, but rather is utilized as a processing facility. Both the La Farge property and the Gernatt property are zoned M-R, although the current zoning map does not reflect it."

Our site on Benz Drive has never had a mining permit from the New York State Department of Environmental Conservation (DEC) or from the Town. Gernatt has never requested that the zoning of the property be changed to M-R, and to our knowledge was not zoned M-R when that zoning classification was created in 2012. To automatically include it in the M-R zoning district, as the draft does, is inaccurate. This site is used for processing aggregates from other locations and the production of hot mix asphalt (HMA). The property should be zoned industrial. There is no reclamation plan filed for the site and no reclamation required by any agency or jurisdiction for this property.

This clarification will alter some statistics in the Draft Plan, including Table 1 on page 17 entitled "Existing Land Uses", and the conclusions arrived at by the authors from their interpretation of the incorrect data. Also, in 2018 Gernatt formally terminated its mining permit for the Belcher Road site with DEC. No mining activity was ever commenced at this location and it should be removed from the Draft Plan's summary of land uses associated with mining (page 17, Table 1).

Updating Table 1, not only for Mineral Extraction, but for all uses listed, may result in changes to summary conclusions in the Draft Plan. The Table currently reflects data from 2015.

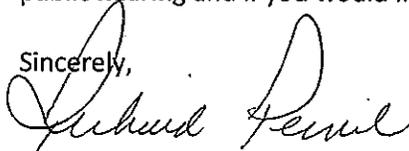
- 2.) Under Section 4.3 Mineral Extraction on page 60, the second sentence under "Analysis Results" says "Members of the general public wished to see the Town do more to regulate future mining activities in the Town". I, and two of my colleagues, attended two of the three public meetings and heard no one, outside of the consultant, say anything that supports that statement. Additionally, in the third Appendix of the Draft, entitled "Public Meetings Information", there are two charts summarizing public responses from the first public comprehensive plan meeting. These charts, titled "Priorities" and "Priorities by # of Votes", both list "Control Gravel Mining" as a choice, yet the public response was zero on both charts. No one at that meeting felt any reason to choose controlling mining as a priority of this comprehensive plan exercise. That same appendix also summarizes the other two public meetings (which we attended) and there is no mention of controlling mining contained in those summaries, other than a slide prepared by the consultant. I have personally spoken with three Comprehensive Plan Committee members who told me that the Committee doesn't have a problem with the gravel industry and is satisfied with the current level of local control. The Draft Plan offers no summary findings from any resident survey nor any other public solicitation of comments to support the statement in 4.3.
- 3.) In "Chapter V: RECOMMENDATIONS AND IMPLEMENTATION", under Section 5.2, Recommendations, Protect the Environment – Mining, the positive statement is made that "mining is an important component of the local and regional economy". The recommendations regarding mining that follow are given "HIGH" priority status and include forming a committee to explore options for regulating mining. It's hard to reconcile that priority level when nowhere in the entire body of the document, outside of overly general, unsupported statements like the one cited in comment #2 above, is there any mention of facts or data supporting the need for additional regulation of mining. Even if the public meeting attendees and CPC members all expressed their disdain for mining, their small number is statistically insignificant, and therefore completely unreliable for use in drawing conclusions, in a Town of more than 8000+ residents. The statistical level of confidence in drawing conclusions from such a small sample size makes these conclusions invalid, unable to pass muster in review.
- 4.) In Section 5.3 on page 88, under "**EAST CONCORD HAMLET**", the first sentence contains the word "quarries". Quarries are mines where consolidated reserves (limestone, marble, granite, etc.) are drilled and blasted from the ground before being recovered. Sand and gravel excavations are not quarries. None of Gernatt's sites in the Town of Concord are quarries and we know of no quarries in the Town of Concord. Because this will be a legal document, this distinction should be clear.
- 5.) The Draft Plan identifies the desire and need for better, more well-maintained infrastructure but makes no connection to the huge cost savings and advantages to the taxpaying public of having the basic infrastructure building blocks, like aggregate and blacktop, available locally. The connection is obvious, the availability of low cost aggregates is required for maintenance, construction and reconstruction of infrastructure which leads to economic development and increased public safety. However, this can only be accomplished when the source of the aggregate is as close as possible to the infrastructure projects. Project costs increase

substantially when the source of aggregates is not near the project. Industry standards are that the cost to haul aggregates doubles with every ten miles that aggregates are trucked.

- 6.) In Section 3.4, "Goals and Objectives", objective 6 on page 49 is to require responsible control of gravel mining practices, including reclamation and restricting mining in areas more suited to development or conservation. Mining, unlike most other land uses, is a temporary land use. When completed the mine site must be reclaimed to another useful purpose. Reclaimed mine sites are frequently suitable for development or conservation purposes. Mineable aggregates are not found everywhere, and restricting mining without consideration for the value of the resource for public use is narrow-sighted. The draft Comprehensive Plan should mention reclaimed mine sites in the Town that are now supporting other uses.

Thank you for considering these comments. Please include these comments in the record of this public hearing and if you would like any further information, please let us know.

Sincerely,



Richard Pecnik  
Regulatory Affairs  
Gernatt Family of Companies

cc: Town of Concord Board Members  
CPC Committee Members  
Peter Sorgi, Esq.  
Adam Schultz, Esq.  
Dave Hamling, President, New York Construction Materials Association  
John Mills, Erie County Legislator  
Senator Patrick Gallivan  
Dennis Dains, Highway Superintendent, Town of Concord  
Fred Hiffa, Park Strategies, LLC, Albany

