

Regular Meeting of the Vestal Town Board December 11, 2013

The Regular Meeting of the Town Board of the Town of Vestal, County of Broome and the State of New York was held at the Town Hall, 605 Vestal Parkway West, Vestal, NY on December 11, 2013.

TOWN BOARD PRESENT:

Supervisor John Schaffer
Councilman Fran Majewski
Councilwoman Patty Fitzgerald
Councilman David Marnicki

ABSENT: Councilman Steve Milkovich

ALSO ATTENDING: Town Attorney David Berger, Town Clerk Emil Bielecki, 1st Deputy Town Clerk Kathie Young and approximately 15 members of the community.

The Supervisor called the Regular Meeting to order at **6:00 PM**, welcomed everyone and asked that all present join in the PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES

On a motion of Councilwoman Fitzgerald, seconded by Councilman Majewski, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved the Minutes of the Regular Meeting on November 20, 2013 are approved.

PUBLIC HEARINGS

The Supervisor offered *Proof of Posting* and *Affidavit of Publication* regarding the Public Hearing for the **Establishment of Consolidated Water District No. 1, Extension No. 195** and described as portion of B.C.T.M.P. #205.02-1-10, **2108 Glenwood Road Vestal**, New York, property of the petitioners Stephen and Brenda Wayman. He then opened the Public Hearing.

Hearing or seeing no one wishing to speak the Supervisor closed the Public Hearing.

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Establish CWD No. 1, Extension No. 195

R329-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to adopt a Resolution approving the Establishment of an Extension of Consolidated Water District No. 1, Extension No. 195 and described as portion of B.C.T.M.P. #205.02-1-10, **2108 Glenwood Road Vestal**, New York, property of the petitioners Stephen and Brenda Wayman.

PRIVILEGE OF THE FLOOR (Agenda Items Only):

A speaker asked about the procedures for disposing of Town vehicles. The Supervisor explained that a mechanic gives their opinion about the condition of the vehicles and the most appropriate disposition approach is determined.

A speaker expressed concern that the funds dedicated to improving roads are being transferred to purchase sand and salt. Supervisor Schaffer explained that the money is coming from *special projects*. Those roads will be finished when it is possible. We need the salt now. The money for the roads is still available.

A speaker commented on the following issues:

- Objects to hiring a law firm to appeal the UHS tax assessment case, calling it another Candlehouse. These lawsuits are costing us millions of dollars.
- Objects to altering the terms of the bid awarded to ZMK construction.
- Objects to the way the Town sells its vehicles and the lack of information concerning the sale prices when sold at Auction International.
- The Highway Department has not picked up limbs and brush at his house that were put out over a month ago.
- There is a drainage issue on his street that needs to be remedied. The problems are caused by a lack of maintenance.

Supervisor Schaffer replied that the UHS lawsuit is very important to the Town and sets an important historical precedent. ZMK is being paid more due to a calculation error by the Town. The vehicles that the Town sells are no longer safe and are usually in a state where it is not cost effective to repair them.

A speaker asked why we are paying so much for out of title pay in the Highway Department. Supervisor Schaffer responded that this is a contractual obligation. It

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is often cheaper to pay out of title rather than to promote people to the higher levels. We are looking to make some changes in this arrangement. Councilman Majewski added that out of title pay has increased because of fewer employees at the Highway Department.

RESOLUTIONS & MOTIONS

Town Justice Court Audit

R330-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to adopt a Resolution acknowledging that the CPA firm of **Ciaschi, Dietershagen, Little, Michelson & Co., LLC** has audited the books and records of the Town of Vestal Justice Courts for the period of January 1, 2012 and ending December 31, 2012.

Hire Attorney to appeal UHSH court decision

R331-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to approve the hiring of **Kenney, Shelton, Liptak and Nowak, LLP**, as attorneys for the Town of Vestal in connection with the preparation, drafting and argument of the appeal pending in the Appellate Division, Third Department entitled *UHSH Inc. v Town of Vestal*, Index # 2012-1855, at the rate of \$175.00/hr.

Consent Decree approved in Candlehouse Inc. v Town of Vestal case

Councilman Marnicki asked the Town Attorney to highlight the contents of the decree.

Town Attorney David Berger stated that under this decree, the Town must pay Candlehouse compensatory damages of \$4,700 and their legal fees of approximately \$250,000.

R332-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

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Resolved to approve the proposed **Consent Decree in Candlehouse Inc. v Town of Vestal**, Civil Action # 3:11-cv-00093, in the Federal District Court, Northern District, on the terms set forth therein, a copy of which is on file with the Vestal Town Clerk. This Decree will resolve all remaining issues in the case upon passage.

Settlement of Article 7 Tax Certiorari Case-Bay Street Associates LLC

R333-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to approve settlement of the following Article 7 Tax Certiorari cases pending in Broome County Supreme Court.

Bay Street Associates LLC

2009-1893 2009-1912 2009-1914 2010-1936 2010-1937
2011-1838 2011-1839 2011-1840 2012-1610 2012-1611
2012-1612 2013-1674 2013-1687

3733 Vest							
Roll Year	Assessment	FMV	STIP AV	Change in AV Frd	School Tax	Town/County Tax	Town Refund
2013-14	\$1,442,600	\$1,442,600	\$1,360,000	-\$82,600	\$31,929.35	TBA	TBA
2012-13	\$1,442,600	\$1,442,600	\$1,360,000	-\$82,600	\$30,669.39	\$19,438.40	\$348.65
2011-12	\$1,442,600	\$1,442,600	\$1,360,000	-\$82,600	\$29,470.73	\$18,605.47	\$329.29
2010-11	\$1,442,600	\$1,442,600	\$1,442,600	\$0			\$0.00
2009-10	\$1,442,600	\$1,443,600	\$1,442,600	\$0			\$0.00
						TOTALS	\$677.94

3717 Vest							
Roll Year	Assessment	FMV	STIP AV	Change in AV Frd	School Tax	Town/County Tax	Town Refund
2013-14	\$2,253,000	\$2,253,000	\$2,040,000	-\$213,000	\$49,866.10	TBA	TBA
2012-13	\$2,253,000	\$2,253,000	\$2,040,000	-\$213,000	\$47,898.33	\$27,859.52	\$894.20
2011-12	\$2,253,000	\$2,253,000	\$2,040,000	-\$213,000	\$46,026.31	\$27,063.08	\$849.15
2010-11	\$2,253,000	\$2,253,000	\$2,253,000	\$0			\$0.00
2009-10	\$2,253,000	\$2,253,000	\$2,253,000	\$0			\$0.00
						TOTALS	\$1,743.35

The Town Attorney and Comptroller are directed to take all steps necessary to implement this resolution.

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Settlement of Article 7 Tax Certiorari case-Vestal Jensen Development LLC

R334-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to approve settlement of the following Article 7 Certiorari case pending in Broome County Supreme Court.

Vestal Jensen Development LLC Index Numbers:

2009-1913 2010-1940 2011-1837 2012-1613 2013-1684

320 N Jen							
Roll Year	Assessment	FMV	STIP AV	Change in AV Fro	School Tax	Town/County Ta	Town Refund
2013-14	\$3,132,300	\$3,132,300	\$2,550,000	-\$582,300	\$69,327.82	TBA	TBA
2012-13	\$3,132,300	\$3,132,300	\$2,700,000	-\$432,300	\$66,592.07	\$40,013.89	\$1,810.07
2011-12	\$3,132,300	\$3,132,300	\$2,800,000	-\$332,300	\$63,989.44	\$38,895.24	\$1,324.76
2010-11	\$3,132,300	\$3,132,300	\$3,132,300	\$0			\$0.00
2009-10	\$3,132,300	\$3,132,300	\$3,132,300	\$0			\$0.00
						TOTALS	\$3,134.83

The Town Attorney and Comptroller are directed to take all steps necessary to implement this resolution.

Settlement of Article 7 Tax Certiorari cases- Shippers Road Management LLC, Vestal Ridge LLC, Sound Management LLC

R335-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent 1 Milkovich

Resolved to approve settlement of the following Article 7 Certiorari case pending in Broome County Supreme Court.

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Shippers Road Management LLC Index Number: 2013-1698

3006 Vestal Rd (TM# 158.10-2-9)							
Roll Year	Assessment	FMV	STIP AV	Change in AV From Prior Year	School Tax	Town/County Tax	Town Refund
2013-14	\$3,410,000	\$3,410,000	\$2,016,000	-\$1,394,000	\$75,474.21	TBA	TBA
TOTALS							\$0.00

Vestal Ridge LLC Index Numbers: 2011-1844 2012-1615 2013-1686

111 Ridgeview Dr (TM# 158.13-3-26-12) 2011 Waived							
Roll Year	Assessment	FMV	STIP AV	Change in AV From Prior Year	School Tax	Town/County Tax	Town Refund
2013-14	\$1,100,000	\$1,100,000	\$890,000	-\$210,000	\$24,346.52	TBA	TBA
2012-13	\$1,100,000	\$1,100,000	\$890,000	-\$210,000	\$23,385.78	\$13,564.05	\$877.90
2011-12	\$1,100,000	\$1,100,000	\$1,100,000	\$0	N/A	N/A	\$0.00
TOTALS							\$877.90

Sound Management LLC Index Number: 2013-1676

441 Commerce Rd (TM# 142.04-1-29)							
Roll Year	Assessment	FMV	STIP AV	Change in AV From Prior Year	School Tax	Town/County Tax	Town Refund
2013-14	\$1,300,000	\$1,300,000	\$1,000,000	-\$300,000	\$28,773.16	TBA	TBA
TOTALS							\$0.00

The Town Attorney and Comptroller are directed to take all steps necessary to implement this resolution.

United Parcel Service

R336-13 On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
Nays 0 Absent: Milkovich

Resolved to approve settlement of the following Article 7 Tax Certiorari cases pending in Broome County Supreme Court.

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United Parcel Service **Index Numbers:**
 2009-1801 2010-1797 2011-1688 2012-1637 2013-1599

432 Comn							
Roll Year	Assessment	FMV	STIP AV	Change in AV Fro	School Tax	Town/County Tax	Est Town Refund
2013-14	\$830,000	\$830,000	\$750,000	-\$80,000	\$18,370.56	TBA	TBA
2012-13	\$830,000	\$830,000	\$750,000	-\$80,000	\$17,645.63	\$10,795.00	\$335.79
2011-12	\$830,000	\$830,000	\$750,000	-\$80,000	\$16,955.98	\$10,497.09	\$318.92
2010-11	\$830,000	\$830,000	\$830,000	\$0			\$0.00
2009-10	\$830,000	\$830,000	\$830,000	\$0			\$0.00
						TOTALS	\$654.72

The Town Attorney and Comptroller are directed to take all steps necessary to implement this resolution.

CONSENT AGENDA

On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the following resolution was

ADOPTED Ayes 4 Majewski, Fitzgerald, Marnicki, Schaffer
 Nays 0 Absent: Milkovich

Resolved to approve the Consent Agenda as follows.

PUBLIC WORKS: Milkovich/Majewski

Park Bench Section 2 of the Rail Trail

R337-13 Authorization to accept a check in the amount of **\$1,250.00** from Sandra Barrett for the purchase and installation of a **park bench** in memory of Joyce Greame, on Section 2 of the Rail Trail. This cost covers the purchase of the bench, the concrete pad, and the labor and equipment costs for the Parks Department for its installation.

Increase Contract Amount For Campus Drive Storm Pipe Project

R338-13 Authorization to increase the contract amount to **ZMK Construction** for the **Campus Drive Storm Pipe Replacement Project** in the

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amount of **\$3,232.45**, reflecting the increase in quantity of rip rap needed for this project, for a total of \$80,188.45.

This project was identified and funded with \$100,000 in 2010 capitals, due to a January storm event.

Disposal of Fixed Assets

R339-13 Approval to dispose of the following fixed assets and remove them from the Town's Asset Record:

Asset	Disposal Method
1955 African Road Bridge	Removed and replaced with new one
1994 Town Hall Surveillance TV System	Removed and replaced with new system
1977 Town Hall Closed Circuit TV system	Removed and replaced with new system

Out of Title Pay for Highway

R340-13 Authorization for Brock Leonard, Highway Superintendent to pay

Out of Title Pay as follows:

Jeffrey Tomczyk	October 3, 7, 9, 10, 2013	\$100.04
Todd Ingersoll	August 22 – November 21, 2013	\$849.00
Donnie Younker	September 26 – November 15, 2013	\$375.76
Scott Walter	October 23 – November 22, 2013	\$409.92
William Garey	October 22 – November 5, 2013	\$ 58.56

BC Contract – Snow & Ice Control

R341-13 Authorization for the Supervisor to sign a **Contract with Broome County for Snow & Ice Control CA 11-80-1** for the term 1/1/14 - 12/31/14 at **\$3700.00** per centerline mile of Tracy Creek Road - CR No. 005 - for a total of 3.8 miles.

Budget Transfer Highway – Snow and Ice Removal

R342-13 Authorization for the Highway Department to **transfer \$30,000 out of D5112.2151** (spec. paving) to **D5142.4006** (ice and snow control) to ensure our supply of sand and salt to the end of the year.

FINANCE: Fitzgerald

Receive and File:

- **Warrant Reports** – 2013 – 47, 47E, 47L, 48, 48E, 49, and 49E
- **Town Clerk's Monthly Report** – November 2013 – Total Local Shares Remitted \$4,773.88.
- **Comptroller's Monthly Report** – November 2013

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Town Attorney Billable Hours

R343-13 Authorization to pay **legal fees** to the **Town Attorney for billable hours** for the period November 1, 2013 through November 30th, 2013 for a **total of \$4740** for 31 hours & 36 minutes.

Billable Hours – Ahmuty, Demers & McManus - Candlehouse

R345-13 Authorization to pay **\$30,769.51** to **Ahmuty, Demers & McManus** for the ***Candlehouse vs. Town of Vestal*** matter for the period ending November 12, 2013. (This bill has been reduced by 15% from \$36,199.42 as a courtesy.)

Expert Testimony – Candlehouse - Bransford

R346-13 Authorization to pay **Cassandra L. Bransford**, PhD in the amount of **\$1350.00** for expert testimony for ***Candlehouse vs Town of Vestal***.

Lease with BC Office for the Aging

R347-13 Authorization to authorize the Supervisor to sign the **Contract Renewal Agreement with Broome County Office for the Aging** to lease space for an additional one year term (January 1 – December 31, 2014) for the Vestal Senior Center – CA 292-145.

PLANNING & ZONING: Fitzgerald/ Milkovich

Approval to Use Library Parking Lot

R348-13 Authorization for the *Learning Disabilities Association of the Southern Tier* to use the Library Parking Lot on January 8, 2014. An **Indemnification Agreement** is to be signed.

R349-13 Authorization for the *Vestal High School* to hold their 5K Road Race, *The Running of the Bear*, on March 29, 2014. School Resource Officer Corey Shirley will coordinate with the Vestal Police Department for assistance with managing intersections and other safety issues. An **Indemnification Agreement** is to be signed.

R350-13 Authorization for *Alpha Phi Alpha Fraternity, Inc.*, to use the parking lot at the Vestal Public Library on May 17, 2014. An **Indemnification Agreement** is to be signed.

Dispose for Salvage – Code – 2000 Chevrolet Impala

R351-13 Authorization for Mark Detric, Code Enforcement Officer to **dispose for salvage, a 2000 Chevrolet Impala** VIN# 2G1WF55K9Y9367862. This vehicle is not operational and repairs would not be cost effective due to age

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and mechanical problems.

PUBLIC SAFETY: Fitzgerald

Sell Police Vehicles

R352-13 Authorization for the Police Department to sell their retired police vehicles which are no longer in service via *Auction International*.

:

Vehicle Year & Make	Miles	VIN
2010 Chevrolet Impala	99,056	2G1WD5EM6A1193048
2010 Chevrolet Impala	115,202	2G1WD5EM2A1191992

The vehicles will be sold in “as is”, “where is” condition.

Fire Station 2 Breakfast

R353-13 Authorization from the Board of Fire Commissioners retroactively approving the Vestal Fire Department Membership for Station 2’s *Firemen Family style breakfast* at Vestal Fire Department Station #2, Route 26 South, Vestal Center.

December 8th, 2013 Time: 7:00 am till 11:30 am

Coverage time is all day which includes personnel to set up, the event itself and clean up. A sign in sheet will be used to track personnel at this event.

Fire Training

R354-13 Approval from the Board of Fire Commissioners for the following **fire training**:

- 1) FF Phillip W Walter to attend Basic Structural Collapse Operations February 10 & 12, 2014 at West Corners Fire Department.
- 2) Lt Phil R. Walter and FF Paul Goon to attend Live Fire Training January 13, 2014 at the Broome Public Safety Building
- 3) Lt Phil R. Walter and FF Paul Goon to attend Conducting Live Fire Training January 20, 2014 at the Broome Public Safety Building.

There is no cost for these courses as they are offered through NYS Outreach Program.

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Remove Turnout Gear from Asset List

R355-13 Authorization from the Board of Fire Commissioners, in accordance with NFPA1851 and having surpassed the 10 year life expectancy, approving the **disposal of Turnout Gear** from the years 2002 and 2003 and removing such from the Town's Asset list.

ADMINISTRATION: Majewski/Milkovich

Part Time Clerks for Tax Receiver

R356-13 Authorization for the Tax Receiver to hire 3 part time clerks at a pay rate of \$9.06 per hour as follows:

- **Debra Jennings** – It is anticipated she will work 2 days in December (to get bills ready to mail) and then as needed in 2014 through 4/18/14.
- **Jennifer Almy**- It is anticipated she will work 2 days in December 2013 to get bills ready to mail.
- **Sarah Wallace** – It is anticipated she will work 2 days in December 2013 to get bills ready to mail.

RECEIVE AND FILE:

- Fire Advisory Board Meeting Minutes – October 21 and November 18, 2013
- Communications from the NYS Comptroller regarding Audit of Elected and Appointed Officials Retirement Reporting – November 25, 2013

END OF CONSENT AGENDA

ADDITIONAL PUBLIC COMMENTS

A speaker noted that the drainage problems on Underwood Road have been addressed and he wishes to thank the Town. Also, he heard the Highway Department has put in a drainage ditch on private property and this concerns him because of a potential lawsuit.

A speaker referenced an article stating that fluids from gas drilling operations can come up to the surface without pressure. Gravity is not keeping the water down.

A speaker expressed concern about the high level of absenteeism by Board Members. This does not serve our Vestal residents well and something needs to be done. People should not be paid if they are absent from meetings.

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A speaker complained that the Highway Department truck picking up leaves was being followed by another truck doing nothing.

OLD BUSINESS

(Public Hearing was held on October 23, 2013)

Local Law “F” of the Year 2013 Entitled: A Local Law to change the zoning map of the Town of Vestal regarding 4696 Vestal Parkway East within the University Plaza, BCTMP #159.2-21.1 from Community Business (C-2) to Planned Development District (PDD) (Metroplex Student Housing, Vestal Park, LLC).

Supervisor Schaffer explained that the Planning Board met on this project last night. There is additional information that the Board will have to review before acting on this rezoning request.

Public Hearing Suspended: November 20, 2013 - Public Hearing for Proposed Local Law “G” of the year 2013 entitled: “A Local Law Amending Sewer Rents in the Town of Vestal.”

Supervisor Schaffer explained that this will have to be addressed next year after we have more information from the Joint Sewage Treatment Plant.

ADJOURNMENT

On a motion of Councilman Majewski, seconded by Councilwoman Fitzgerald, the meeting was adjourned at 6:38 PM. Carried unanimously.

Approved by _____
Emil J. Bielecki, Town Clerk