

Minutes of the Village Board Meeting held at Town Hall on May 11, 2017 at 7PM

Present: Michael Queenan, Mayor  
Neil Crouse, Timothy Egan, Thomas Flood and Anthony Mickolajczyk  
Absent: None  
Also Present: Dennis Lindsay, Engineer for the Village; Stuart Turner, Planner for the Village; Maria Hunter, Planning Board; David Sutz, Town Supervisor

**I. Administrative Business:**

a. Acceptance of Minutes:

Motion was offered by Trustee Flood, seconded by Trustee Crouse, to accept the minutes of the regular meeting held April 27, 2017.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

b. Approval of Abstract:

Motion was offered by Trustee Mickolajczyk, seconded by Trustee Flood, to approve Abstract 23 containing vouchers 162076 - 162158 (void voucher 162131) and totaling \$134,740.73.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

c. Approval of Budget Modifications:

Motion was offered by Trustee Mickolajczyk, seconded by Trustee Egan, to approve a modification to the budget of the Highway by decreasing A5110.101 (HD – Personal Services) by \$63,040 and increasing A2680 (Insurance Recoveries) by \$10,000, A5010.411 (HD – Office Supplies) by \$345, A5010.422 (HD – Drug Testing) by \$140, A5110.448 (HD – Misc Repairs) by \$30, A5110.451 (HD – Tools/Inside) by \$200, A5110.452 (HD – Sand/Gravel) by \$435, A5110.469 (HD – Drainage Pipe) by \$415, A5130.200 (HD – Machine Equipment) by \$9840, A5130.417 (HD – Flares/Oxygen) by \$60, A5130.447 (HD – Truck Parts/Repairs) by \$4500, A5130.452 (HD – Blacktop) by \$345, A5130.454 (HD – Oil/Lubrication) by \$30, A5140.425 (HD – Ground/Weed Control) by \$990, A5142.200 (HD – Equip – Snow Removal) by \$10,175, A5142.447 (HD – Snow Truck Repairs) by \$21,045, A5142.466 (HD – Salt/Liquid Calcium) by \$24,490.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Flood, seconded by Trustee Egan, to approve a modification to the budget of the Fire Department by decreasing A3410.202 (FD – Short Term Equip) by \$8060 and increasing A2665 (Sale of Equipment) by \$32,850, A3410.201 (FD – Long Term Equip) by \$37,600, A3410.455 (FD – Equipment Repairs) by \$2400, A3410.461 (FD – Ladder Testing) by \$175, A3410.464 (FD – JAWS Testing) by \$70, A3410.471 (FD – Extinguisher Main) by \$665

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Crouse, seconded by Trustee Mickolajczyk, to approve a modification to the budget of the General Fund by decreasing A8010.444 (ZB – Schools/Dues) by \$27, A8020.402 (Comprehensive Plan) by \$29,258, A8020.444 (PB – Schools/Dues) by \$102, A9060.802 (Dental Insurance) by \$20,000 and increasing A1210.430 (Mayor – Trans/Travel) by \$1200, A1410.401 (VC – FOIL Expense) by \$150, A1410.454 (VC – Advertising) by \$500, A1420.403 (Attorney – Zoning Board) by \$2000, A1440.401 (Engineer – Contractual) by \$20,000, A1440.411 (Planner – Contractual) by

\$5000, A1920.400 (Municipal Dues) by \$408, A8010.411 (ZBA – Office Supplies) by \$27, A8020.430 (PB – Trans/Travel) by \$102, A9060.801 (Hospital/Medical) by \$20,000.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Crouse, seconded by Trustee Egan, to approve a modification to the budget of the Consolidated Water Fund by decreasing FC8310.415 (Engineering) by \$1600 and increasing FC8310.463 (Consult Fee – Comp) by \$1600.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Crouse, seconded by Trustee Egan, to approve a modification to the budget of Water 6 (Amdur Park) Fund by decreasing FA8310.441 (Sludge Removal) by \$1125 and increasing FA8310.434 (Contracts/Permits) by \$125, FA8310.466 (Generator Service) by \$1000.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Crouse, seconded by Trustee Egan, to approve a modification to the budget of the Sewer 1 (Valley Forge) Fund by decreasing GV8110.438 (Operation/Main) by \$800 and increasing GV8110.426 (Chemical/Supply) by \$800.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

Motion was then offered by Trustee Crouse, seconded by Trustee Egan, to approve a modification to the budget of the Consolidated Sewer Fund by decreasing GC1930.400 (Judgment/Claims) by \$2500 and increasing GC8110.403 (Heating Oil/Claims) by \$2500.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

d. Tax Collection Warrant:

Motion was offered by Trustee Crouse, seconded by Trustee Egan, to authorize the Mayor and Village Clerk to sign the FY2017/2018 Collecting Officer's Warrant totaling \$7,205,643.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

e. 2017/2018 Holiday Schedule:

Motion was offered by Trustee Egan, seconded by Trustee Flood, to adopt the FY2017/2018 Holiday schedule as follows: July 3 (Monday) Floating Holiday, July 4 (Tuesday) Independence Day, September 4 (Monday) Labor Day, October 9 (Monday) Columbus Day, November 10 (Friday) Veterans Day, November 23 (Thursday) Thanksgiving, November 24 (Friday) Day after Thanksgiving, December 25 (Monday) Christmas Day, January 1 (Monday) New Year's Day, January 15 (Monday) Martin Luther Day, February 19 (Monday) President's Day, and May 28 (Monday) Memorial Day.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

f. Fire Department Equipment Requisition:

Motion was offered by Trustee Mickolajczyk, seconded by Trustee Egan, to approve Fire Department Equipment Request 2017-05 totaling approximately \$245.53 for the purchase of a digital scanner and 2017-06 totaling approximately \$2854.16 for the purchase of power tool/rescue equipment.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk

NOES 0

g. Fire Department Membership:

Motion was offered by Trustee Flood, seconded by Trustee Crouse, to accept an application received from John Davis as a junior member of the Highland Mills Fire Company.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

h. Change of Meeting Dates – May 25 and June 8:

Motion was offered by Trustee Crouse, seconded by Trustee Flood, to change the May 25 meeting date to May 23 and the June 8 meeting date to June 12. Both meetings will begin at 7PM.

**ADOPTED** AYES 5 Queenan, Crouse, Egan, Flood, Mickolajczyk  
NOES 0

**II. Old Business:**

a. Zoning Change Request – Dunderberg Ventures:

Mayor Queenan noted this issue was discussed at the April 13 meeting. A request for a zone change from R2A Zone to OP Zone was received from Dunderberg Ventures. At that time the Board determined the zone change was not in the best interest of the public based on reports received from Village consultants. The petitioner has requested the opportunity to speak to the Board to explain the application since he did not attend the April 13 meeting.

Tim Miller, Planner representing the property owners, stated he has reviewed the minutes of the meeting, the Village's Comprehensive Plan/Zoning Code and he wants to offer a different perspective of the property. He provided copies of the following documents for the Boards consideration: a Google© map of the property, a copy of the zoning map of the property's location, zoning regulations for the R2A and IB districts, page 6.4 of the Comprehensive Plan, a letter from Woodbury Villas granting permission for the property to have access to the water/sewer lines for their development, sections from the Noise Ordinance and results from a noise test conducted at the site. He feels the property, which is currently zoned R2A, does not meet the zonings purpose which is "to provide a safe and suitable living environment for single-family residences and similar compatible uses located outside of the publicly operated or approved water and sewer districts". He believes this does not define this property properly adding the noise study conducted exceeded what is permitted in this zone pursuant to the noise ordinance.

Trustee Crouse stated he is concerned the increased traffic this proposed office building will bring to an already congested area, noting there are inexperienced drivers going to and from the high school and safety should be a top concern. He has walked this site twice and he feels it is very difficult to approve this request, adding it is not supported in the Comprehensive Plan either. Mr. Miller stated he feels the Comprehensive Plan is very specific about the R2A zone and feels the current zoning of the property is not consistent with the Comprehensive Plan. He also feels that since the property is on a County road the traffic concerns would not be valid. He suggested the Board permit the review to proceed and a traffic study could be conducted during the Planning Board phase. Trustee Crouse stated he also has concerns about the wetlands and wildlife in this area. Mayor Queenan added those issues would also be raised during the Planning Board process. Trustee Crouse stated he is still concerned about this being considered spot zoning. Trustee Egan stated he shares this concern adding that the Village has no control over the zoning on the other side of this property, which is in the Town of Monroe.

Engineer Lindsay highlighted some of the comments he made in his memo. He agrees that extensions and easements would be required to provide water/sewer to the site from the Woodbury

Junction development. He also noted there are several either types of permitted uses in this zone other than residential. He feels this type of zone change would require a number of variance (parking/setback to name a few). He also believes access to the property would be an issue. Trustee Mickolajczyk noted the original request was to change the zoning to the OP District but the documentation submitted this evening has the IB District schedule. Mr. Miller stated that was his error and he meant to include the OP District.

Planner Turner stated there are clearly some site issues that need to be dealt with on this application. He noted when the Comprehensive Plan was created the overall criteria was an intention for a lower density residential category. He feels this is a difficult site with unique characteristics and has been considered a buffer area between Route 17 and Nininger Road. He believes some of the comments made by the petitioners Planner have validity but noted the R2A zone does permit other opportunities, although not the size the petitioner wants to do. The Comprehensive Plan also states the Village wanted to focus on economic development in the hamlets and interchange areas. This site has a lot of restrictions and how much economic development it can produce is questionable. He does not believe this request is consistent with the Comprehensive Plan. He is also concerned about the amount of traffic that would be added to this area but feels it would not be inappropriate for the Board to permit the petitioner to go through the environmental impact factors. He cautioned the OP Zone does provide a lot of uses other than just office parks. He believes this site is more appropriate for low density development.

Mayor Queenan stated he feels it was very generous of Woodbury Villas to offer water/sewer to the project but it is not theirs to offer as it is owned by the Village. He is concerned that if the Board moves forward with this request it would be at a great expense to the petitioner due to all the studies he would need to conduct. Then if approved he could still be denied by the Planning Board/Zoning Board after spending a significant amount money during their processes, which could then open the Village up to litigation. He feels the attorney should be asked if the zone change is granted can it be a condition be made that it is only being granted for an office park and no other use.

Mr. Miller stated he feels the engineering issues brought up are valid but believes there are solutions to these problems which can be discovered during the planning process. He also feels the ZBA will agree the residential zoning of this site is inappropriate. With regards to the spot zoning, he does not believe this to be a valid argument since the property is separated off by a State highway and County road. The owners are trying to find a viable use for this property that they have paid taxes on for many years. He feels if they are willing to undergo the effort to demonstrate that an alternative can be accomplished then he feels the Board should consider the application and allow it to progress.

Trustee Egan asked what the zoning on the property was when the petitioner purchased it and Planner Turner stated he believes there has been no change to the zoning so it would have been R2A. Mayor Queenan asked if it would make sense to refer the petitioner to the Planning Board for a pre-app meeting to see if it would proceed there noting again he does not want the petitioner to spend money needlessly on this issue. Engineer Lindsay stated a pre-app meeting would consist of what has already been discussed this evening. As legislative entity the Village Board is responsible to decide on this issue and then the Planning Board has the responsibility to act on the property based on what is approved. If the criteria is not met based on the restrictions in the zoning the Planning Board then refers it to the ZBA. The ZBA then goes through their process to see if the variance is appropriate based on the information provide. Trustee Egan stated his concerns increase the more the request is discussed. Planner Turner agrees the Mayor makes a good point about not putting the applicant through a long process if there is no desire to entertain the request. He added he is not comfortable recommending a zone change request without understanding or knowing the consequences.

Mayor Queenan added he is also concerned about a "bait and switch" that could occur if the zone change is approved. He agrees that he would not want a house there but that a small office plan

may be appropriate, not the size they are seeking. He would like to obtain an opinion from our counsel about this and some of the questions raised this evening.

Mr. Miller stated at the April 13 meeting the Board voted to not consider the request and tonight the petitioner is asking you to reconsider. He feels all the concerns addressed would be included in SEQRA process and agrees the applicant will need to make a decision about the expense of moving through that process, doing so at his own risk. He added the Board has been very clear about not wanting the applicant to waste money without a likelihood of success. He feels there is ample opportunity for the Board to say yes to this request.

Mayor Queenan stated he would be more comfortable obtaining legal advice on this issue prior to making a decision. Trustee Flood stated he is not open to changing his mind based on all the concerns raised this evening and he believes there are now more negative than positives. Trustee Crouse stated he agrees added the property was zoned residential when it was purchased by the petitioner. He believes nothing presented tonight has convinced him to change his mind. Trustee Egan stated he has not heard anything new that would make him change his position either and agreed more negatives have been raised. During the ZBA process one of the questions to be answered is if the hardship is a self-created one and he does not believe this question can be answered favorably. However, he does not object obtaining a legal opinion on the issue. Trustee Mickolajczyk agrees he also has not heard anything that has changed his mind either and also has concern about what plan would ultimately be put forward on the property. Since a majority of the Board has stated they are not willing to reconsider the issue he would not be favorable of spending money to obtain a legal opinion.

Mr. Miller stated he feels the information presented this evening is very important to consider and that the conditions of the property are not right for a residential development. Mayor Queenan stated he believes the Board has seriously considered this request and wishes the applicant success in utilizing the property as it is zoned with one of the permitted uses already in place.

b. Discussion – Introductory Local Law 3 Solar Generating Facilities:

Motion was offered by Trustee Egan, seconded by Trustee Crouse, to adopt the following resolution to schedule a public hearing and taking necessary SEQRA actions:

**WHEREAS**, the Village Board of Trustees wishes to set a time and place for a public hearing to consider Introductory Local Law 3 of 2017, which will add Section 310-39.5 entitled "Solar Generating Facilities" to Article V entitled "Supplementary Regulations" within Chapter 310 entitled "Zoning".

**NOW, THEREFORE, IT IS HEREBY**

**RESOLVED**, that the Village Board of Trustees hereby determines that it will be the lead agency with respect to the review of the proposed local law in accord with New York State Environmental Quality Review Act ("SEQRA") and part 617 of the regulations implementing SEQRA, since there are no other agencies that have the authority to approve the project; and let it be further

**RESOLVED**, that the Village Board of Trustees hereby preliminary classifies the action as an unlisted action under SEQRA; and let it be further

**RESOLVED**, that the Village Board of Trustees hereby preliminary declares this action as have a negative declaration; and let it be further

**RESOLVED**, that a public hearing will be held by the Village Board of Trustees in order to receive comments and suggestions regarding proposed amendments to the Village Code on June 22, 2017 at 7PM at the Town Hall, located at 511 Route 32, Highland Mills, New York; and it is further

**RESOLVED**, that the Village Clerk is authorized and directed to cause public notice of said hearing to be given as provided by law.

**ADOPTED**      AYES    5            Queenan, Crouse, Egan, Flood, Mickolajczyk  
                     NOES    0

**III. New Business:**

a. Resolution – Authorizing Special Counsel to Retain Expert Witness:

Motion was offered by Trustee Egan, seconded by Trustee Crouse, to adopt the following resolution authorizing special counsel to retain expert witnesses:

**WHEREAS**, the Village of Woodbury, New York (“Village”) is currently named as party in litigation entitled Village of Kiryas Joel, New York, et al. v. Village of Woodbury, New York, et al; under Index No. 2011-009655 (“Litigation”); and

**WHEREAS**, after a recent Appellate Division Decision in the favor of the Village, the Litigation is continuing on a specific area referenced in the Petition and Complaint of the Plaintiffs in that Litigation; and

**WHEREAS**, Special Counsel for the Village, John Stepanovich, Esq. (“Special Counsel”) has advised the Village regarding the need for an Expert Witness to be retained presently as well as the future need for potential Expert Witnesses with regard to this Litigation; and

**WHEREAS**, the Board of Trustees for the Village (“Village Board”) desires to authorize Special Counsel to retain such an Expert Witness or Witnesses as needed with the Village responsible for the cost of paying for such Expert Witness or Witnesses; and

**WHEREAS**, Special Counsel has advised the Village Board that one Expert Witness has currently been identified and that the cost of said Expert Witness is \$300 per hour plus reasonable costs and disbursements and the Village Board wishes to authorize Special Counsel to employ such an Expert Witness at this time. The Village Board reserves its right to authorize Special Counsel to retain other Expert Witnesses upon appropriate request by Special Counsel to the Village Board.

**THEREFORE BE IT RESOLVED** that:

1. The above “Whereas” are incorporated by reference as if set forth fully herein.
2. The Village Board hereby authorizes Special Counsel to employ an Expert Witness as disclosed by Special Counsel at the hourly rate of \$300 per hour plus reasonable costs and disbursements to be paid by the Village upon request and presentation of a Statement for Services Rendered.
3. The Mayor is hereby authorized to take any and all necessary actions and execute all necessary documents to carry out the provisions of this Resolution.
4. This Resolution shall be effective immediately.

<b>ADOPTED</b>	AYES 5	Queenan, Crouse, Egan, Flood, Mickolajczyk
	NOES 0	

b. Insurance Policy Renewal – FY2017/2018:

Motion was offered by Trustee Crouse, seconded by Trustee Mickolajczyk, to accept the proposal received from Marshall & Sterling for insurance coverage for the FY2017/2018 totaling \$125,279.80.

<b>ADOPTED</b>	AYES 5	Queenan, Crouse, Egan, Flood, Mickolajczyk
	NOES 0	

c. Orange & Rockland LED Conversion Agreement:

Correspondence was received from Orange & Rockland (O&R) informing the Village of NYS Public Service Commission order on Case 16-E-0226 which requires they offer additional Light Emitting Diode (LED) street lighting options to municipalities in their service territory. Beginning April 1, 2017 all failed luminaires will be converted to LED at no cost to the municipality if consent to O&R is provided. They will also continue to offer the replacement of up to two percent (2%) of its streetlights on a system-wide basis and shall apply to LED conversions only. This will only be done upon the request of the Village and the deadline in July 1, 2017. Motion was offered by Trustee Egan, seconded by Trustee

Flood, to authorize the Mayor to sign an agreement with Orange & Rockland granting consent for them to convert failed luminaires to Light Emitting Diodes at no cost to the Village.

**ADOPTED**      AYES    5            Queenan, Crouse, Egan, Flood, Mickolajczyk  
                     NOES    0

Additionally, a letter will be written requesting that 2% of our light inventory be converted to LED. It was noted there are almost 800 street lights in the Village.

d. Request to Refund Building Permit Fee from 2007:

A verbal request was made by Nicholas Cardoropoli to Building Inspector Gary Thomasberger to be refunded his 2007 building permit fee (\$7225). Inspector Thomasberger noted this permit was renewed in 2010 but has been expired for the past five years. He suggests that if the Board decides to grant this request \$500 be withheld for administrative costs. Mayor Queenan stressed this was a permit fee and not money placed in escrow that belongs to the applicant. Trustee Crouse added that if we grant this request it could set a precedent for all others that have had permits expired but have not received their application fee returned. The Board agreed. Motion was then offered by Trustee Mickolajczyk, seconded by Trustee Flood, to deny the request based on the time that has lapsed since the permit was obtained, renewed and expired.

**ADOPTED**      AYES    5            Queenan, Crouse, Egan, Flood, Mickolajczyk  
                     NOES    0

**IV. Public Comment:**

Joseph Zlata asked what the Building Inspector can or cannot enforce as it relates to the Homeowners Association (HOA) restrictions, specifically about the colors of homes approved by the Architectural Review Board (ARB) versus what the HOA permits. Mayor Queenan stated the Building Inspector's role is to enforce the Village Code and rulings of the Planning Board/Zoning Board. It is not his responsibility to enforce restrictions imposed by the HOA. Trustee Egan added the HOA can impose stronger restriction than what was approved by the ARB.

**V. Board Member/Department Comment:**      *None were received.*

**VI. Adjournment:**

With no further business to discuss, a motion was offered by Trustee Crouse, seconded by Trustee Egan, to end the executive session and adjourn the meeting at 8:25PM.

**ADOPTED**      AYES    5            Queenan, Crouse, Egan, Flood, Mickolajczyk  
                     NOES    0

Desiree Potvin, Village Clerk