

REGULAR MEETING

July 16, 2007

A regular meeting of the Town Board of the Town of Busti was held on June 16, 2007 at 6:45 p.m., at the Town of Busti Administration Building, 121 Chautauqua Avenue, Lakewood, New York, with the following members present:

Supervisor Kathleen A. Sullivan  
Councilman Lyle T. Hajdu  
Councilman Richard a. Sanders  
Councilman Paul R. Hazzard  
Councilwoman Marsha L. Hern

Supervisor Sullivan called the meeting to order with the salute to the flag and a moment of silence was observed.

Councilman Sanders offered the following motion which was duly seconded by Councilman Hazzard:

RESOLVED, that Mick Peterson be appointed counselor for the summer recreation program at \$7.15 per hours retroactive June 29, 2007.

Upon roll call vote, all aye.

Councilman Hazzard offered the following motion which was duly seconded by Supervisor Sullivan:

RESOLVED, that the town make payment to Greater Jamestown Empire Zone in the amount of \$10,750 for 2007.

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Sanders:

RESOLVED, that the following resolution for Multi-Jurisdictional Hazard Mitigation Plan be approved:

Name of Jurisdiction: Town of Busti

Governing Body: Town of Busti Town Board

Address: 121 Chautauqua Avenue

Lakewood, New York 14750

WHEREAS, Town of Busti, with the assistance from Town of Busti Supervisor, has gathered information and prepared the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan; and

WHEREAS, the Chautauqua County Multi-Jurisdictional hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000 and 44 CFR Part 201; and

WHEREAS, Town of Busti is a local unit of government that has afforded the citizens an opportunity to comment and provide input in the Plan and the actions in the

Plan; and

WHEREAS, Town of Busti have reviewed the Plan and affirms that the Plan will be updated no less than every five years;

NOW, THEREFORE, BE IT RESOLVED by the Town of Busti Town Board that Town of Busti adopts the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan and this jurisdiction's Natural Hazard Mitigation Plan; and resolves to execute the actions in the Plan.

ADOPTED this 16<sup>th</sup> day of July, 1007 at the meeting of the Town of Busti Board.

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that Assessor Randall G. Holcomb be reappointed for a six year term effective October 1, 2007 through September 30, 2013.

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Hazzard:

RESOLVED, that Supervisor Sullivan be authorized to make the following transfers:

<u>Transfers to Account:</u>		<u>Transfers from Account:</u>	
A1010.200 Justice – Equipment	123.97	A1990.4 Contingency	4,049.76
A1440.400 Engineer – Contractual	3,980.00	A1110.400 Justice – Cont.	123.97
A1920.400 Municipal Association Due	69.76		<u>4,173.73</u>
	<u>4,173.73</u>		

To adjust budget for “A Fund”

Upon roll call vote, all aye.

Councilman Sanders offered the following motion which was duly seconded by Councilwoman Hern:

RESOLVED, that the cost of payment to Jack Knowlton, Sexton for mowing of the cemeteries be increased as follows:

Busti Cemetery	\$300.00 per mowing to \$325.00
Bentley Cemetery	\$130.00 per mowing to \$145.00
Wellman Cemetery	\$85.00 per mowing to \$ 95.00

Upon roll call vote, all aye.

Councilman Hazzard offered the following resolution endorsing the NYS Property Taxpayer Protection Act which was duly seconded by Councilman Hazzard:

Whereas, The tremendously high property tax burden on New York families and businesses in the number one issue facing our community today, and the sheer cost of living in New York has forced many residents and businesses to leave, thus slowing the economic engine of the state; and

Whereas, Young people are finding it difficult to purchase homes, seniors are struggling to maintain their homes, and businesses are facing immense challenges to create and retain jobs; and

Whereas, New Yorkers face the highest property taxes in the nation, and when measured as a percentage of home value, nine of the top 10 property tax rates in the entire country belong to counties in New York; and the State must act now to thwart the detrimental effects that high property taxes are having on local governments; and

Whereas, Assembly Minority members have introduced the “New York State Property Taxpayer Protection Act (Assembly Bill 8775),” which puts forth new and innovative ideas for property tax reform that limit the amount school districts can raise annually through local tax levies to four percent or the rate of inflation, whichever is less; in addition the Act would relieve municipalities and school districts of unfunded mandates, reduce county Medicaid costs strengthen financial accountability over school tax dollars, promote local government efficiency, and encourage local option insurance pooling; and

Whereas, The “New York State property Taxpayer protection Act” will help fix New York’s broken property tax system, providing homeowners, businesses and municipalities significant and lasting relief from the crushing burden of skyrocketing property taxes; and now, therefore, be it

Resolved, That this Legislative body pause in its deliberations to acknowledge New York State’s property tax crisis and urge the immediate passage and chaptering of the “New York State Property Taxpayer Protection Act,” which will help local governments reinvigorate New York’s economy by providing incentives for people and businesses to move and stay here; and be it further

Resolved, That a copy of this Resolution, suitably engrossed, be transmitted to the governor of the State of New York, the Temporary President of the New York State Senate, the Speaker of the New York State Assembly, and to each member of the New York State Legislature.

Upon roll call vote, all aye.

Councilman Sanders offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that the town authorize Town Engineer Rex Tolman to survey the canal walls in the Vukote Canal District for property owners who still need to replace their retaining walls.

Upon roll call vote, all aye.

Supervisor Sullivan noted it was 7:00 p.m. and time for the public hearing on Local Law No. 1 of 2007.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Hazzard:

RESOLVED, that the public hearing for Local Law No. 1 of 2007 be declared open.

Upon roll call vote, all aye.

Proof of publication was placed on file.

Supervisor Sullivan noted the proposed local law to be adopted for unsafe buildings and collapsed structures.

Councilman Sanders supports the local law which gives the town the authority to put the burden of the cost back on the property owner.

Attorney Joel H. Seachrist noted there are no environmental requirements prior to adopting this local law.

Councilman Hazzard offered the following motion which was duly seconded by Councilwoman Hern:

RESOLVED, that the public hearing be declared closed.

Upon roll call vote, all aye.

Councilman Sanders offered the following motion to adopt the following Local Law No. 1 of 2007 which was duly seconded by Councilman Hazzard:

Town of Busti  
Local Law No. 1 of 2007

A LOCAL LAW TO ADOPT AN UNSAFE BUILDINGS AND COLLAPSED STRUCTURES LAW

Be it enacted by the Town of Board of the Town of Busti, County of Chautauqua and State of New York, as follows:

SECTION 1. AUTHORITY.

This local law is promulgated pursuant to the authority contained in Section 10, Subdivision 2, of the Municipal Home Rule Law and Section 130, subdivision 16, of the Town Law of the State of New York.

SECTION 2. UNSAFE BUILDING AND COLLAPSED STRUCTURES LAW

A new Article 36-100, providing for an Unsafe Building and Collapsed Structures Law, is hereby added to the Town of Busti Code, and shall provide as follows:

Article 36-100: Unsafe Buildings and Collapsed Structures

Section 36-101. Purpose.

Unsafe buildings and collapsed structures pose a threat to life, health, and property in the Town of Busti. Buildings and structures may become unsafe by reason of damage by fire, or other casualty damage, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows are nuisances and serve as a congregation area for vagrants, the homeless, mentally incompetent and children, who may be injured therein. A dilapidated building or collapsed structure may also serve as a place of rodent infestation and thereby create a health menace to the community. Debris, rubble or parts of buildings left on the ground or in disrepair and not removed constitute a dangerous, unhealthy and unsightly condition. It is the purpose of this law to provide for the safety, health, protection and general welfare of people and property in the Town of Busti by requiring such unsafe buildings to be repaired or demolished and removed.

Section 36-105. Definitions.

As used in this Article, the following terms shall have the meanings indicated.

**BUILDING** - Any building, structure or portion thereof used for residential, business, industrial, recreational or any other purpose.

**CODE ENFORCEMENT OFFICER** - The Code Enforcement Officer of the Town of Busti or such other person appointed by the Town Board to enforce the provisions of this chapter.

**PORTION OF BUILDING OR STRUCTURE** - Any debris, rubble or parts of buildings which remain on the ground or on the premises after demolition, reconstruction, fire or other casualty.

**UNSAFE BUILDING OR STRUCTURE** - Any building or structure or portion thereof which because of its structural condition, is or may become dangerous or unsafe to the public, and may include, without limitation, any or all of the following:

- A. Units open at the doorways or accessible by and a source of attraction to minors under eighteen (18) years of age, as well as to vagrants and other trespassers;
- B. Units which may become a place of rodent infestation, or infestation by other insects or pests;
- C. Units consisting of debris, rubble or parts of buildings left on the ground after demolition, reconstruction, fire or other casualty; and/or
- D. Units presenting any other danger to the health, safety, morals and general welfare of the public.

Section 36-110. Maintenance of Buildings and Structures.

It shall be unlawful for any owner, tenant or occupant of any building or structure or portion of any building or structure in the Town of Busti to maintain an unsafe building or structure as defined herein.

Section 36-115. Investigation and Report.

When, in the opinion of the Code Enforcement Officer or Town Engineer, any building or structure located in the Town of Busti shall be deemed to be an unsafe building or structure as defined herein, the Code Enforcement Officer or Town Engineer shall make a formal inspection thereof and report in writing to the Town Board his findings and recommendations with regard to the building or structure.

Section 36-120. Order of Hearing; To Repair; Expense Assessment and Time

The Town Board shall thereupon consider said report, and if it finds that such building or structure is dangerous and unsafe to the public, it shall, by resolution order its repair if the same can be safely repaired and, if not, its removal and demolition, and shall further order that a hearing be held before the Town Board at a time and place therein specified and on at least five (5) days notice to the owner of the building or structure or persons having an interest therein to determine whether said order to repair or remove shall be affirmed or modified or vacated and, in the event of modification or affirmance, to assess all costs and expenses incurred by the Town in the repair or removal of such building or structure against the land on which said building or structure is located. The order shall also provide that the repair or removal of the building or structure shall be commenced within thirty (30) days after receipt of the notice and shall be completed within sixty (60) days thereafter.

Section 36-125. Contents of Notice.

The notice shall contain the following statements:

- A. The name of the owner or person in possession as appears from the tax and deed records.
- B. A brief description of the premises and its location.
- C. A description of the building or structure which is unsafe or dangerous and a statement of the particular ways in which it is unsafe or dangerous.
- D. An order requiring the same to be repaired to a safe and secure condition or to be removed.
- E. An order that the repair or removal of the building or structure shall be commenced within thirty (30) days of the service of the notice and shall be completed within sixty (60) days thereafter.
- F. The time and place of the hearing to be held before the Town Board, at which hearing the owner or occupant shall have the right to contest the order and findings of the Town Board.
- G. That in the event that such owner, occupant or other person having an interest in said premises shall fail to contest such order and fail to comply with the same, the Town Board may order the repair or removal of such building or structure by the Town and that the Town will assess all costs and expenses incurred in such repair or removal against the land on which such building or structure is located.

Section 36-130. Service and Filing of Notice.

- A. A copy of the notice issued by the Town Board shall be personally served upon the owner or some one of the owners executors, legal representatives, agents, lessees or other person having a vested interest or contingent interest in the premises as shown by the Collector of Taxes and/or in the office of the Chautauqua County Clerk or Chautauqua County Treasurer.
- B. If no such person can be reasonably found for personal service, then a copy of the notice shall be mailed to such person by certified mail addressed to his last known address as shown on said records and by personally serving a copy of said notice upon any adult person residing in or occupying the premises or by securely affixing a copy of said notice upon the building or structure.

C. A copy of the notice shall be filed in the Chautauqua County Clerk's Office in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided. A notice so filed shall be effective for a period of one (1) year from the date of filing. It may be vacated, however, upon an order of Judge or Justice of a Court of Record or upon the consent of the Town Attorney. When vacated, the Chautauqua County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order

#### Section 36-135. Hearing.

The Town Board shall conduct the public hearing at the time and place specified in the notice to repair or remove, and may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of hearing, the Town Board shall determine by resolution to (a) revoke the order to repair or remove, (b) modify the order, or (c) continue and affirm said order and direct the owner or other persons to complete the work within the time specified in the order or by such other time as shall be determined by the Town Board.

#### Section 36-140. Failure to Comply.

If the owner or person so notified fails or neglects to comply with the order of the Town Board within the time specified in the order made following the public hearing, the Town Board may provide by resolution that such buildings or structure be made safe and secure or removed and demolished by Town employees, by independent contractors, or by other lawful means available to the Town.

#### Section 36-145. Assessment of Expenses.

All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building or structure, including the cost of actually removing such building, shall be assessed against the land on which the building or structure is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy of an ad valorem levy.

#### Section 36-150. Emergency Cases.

Where it reasonably appears that a building or structure presents a clear and imminent danger to the life, safety or health of any person or property, unless such building or structure is immediately repaired and secured or demolished by its owner or occupant, the Town Board may by resolution authorize the Code Enforcement Officer or Town Engineer to immediately cause the repair or demolition of such unsafe building or structure. The expenses of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in Section 136-145 hereof.

### SECTION 3. VALIDITY AND SEVERABILITY

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

### SECTION 4. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

Upon roll call vote, all aye.

Councilman Sanders offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that Supervisor Sullivan be authorized to sign the Agreement with County of Chautauqua for administration of New York State Environmental protection Fund Grants for the Chautauqua Lake management Commission's current watershed management plan.

AGREEMENT

Administration of New York State  
Environmental Protection Fund Grants

This Agreement is made as of July 2, 2007 by and between the following parties:

COUNTY: COUNTY OF CHAUTAUQUA, NEW YORK  
A Municipal Corporation  
Gerace Office Building  
Mayville, New York 14757-1007  
hereinafter called "County,"

CONTRACTOR: TOWN OF BUSTI, NEW YORK  
A Municipal Corporation  
121 Chautauqua Avenue  
Lakewood, New York 14750  
Hereinafter called "Town."

WHEREAS, Town has been successful in obtaining two Environmental Protection Fund grants from the New York State Department of State's Division of Coastal Resources; and

WHEREAS, the initial grant of \$149,000 will fund the completion of a Watershed management Plan in accordance with New York State guidelines; and

WHEREAS, the subsequent grant for \$85,000 will fund stream assessment, water monitoring and data collection for two of the eleven major tributaries of Chautauqua Lake to provide data relevant for erosion control and stream restoration; and

WHEREAS, each program is related to, and needs to be integrated into, the Chautauqua Lake Management Commission's current Watershed Management Plan and the 14 Action Steps recommended and funded for the County's 2007 budget year; and

WHEREAS, the County Planning Department has the knowledge and ability to administer and integrate Town's grants efficiently and an established relationship with the New York State Department of State's Division of Coastal Resources; and

WHEREAS, the Chautauqua County Legislature by Resolution No. 111-07 authorized County to enter into an agreement with Town to administrate the grants,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Services. County through its Planning Department shall implement and administer the two (2) aforementioned New York State Environmental protection Fund grants on behalf of Town. County's services shall be performed in compliance with the grant awards, program work plans, and other requirement provided by the State.

2. Payment: In consideration of the foregoing, Town shall pay County a maximum sum not to exceed Two Hundred Thirty-four Thousand and No/100 Dollars

(\$234,000.00). Payment shall be made monthly as funds are advanced by the State to Town, upon submission by County to Town of a property executed, itemized, and certified claim voucher or invoice in form and content approved by Town.

3. Term: This Agreement shall commence as of July 2, 2007, and shall terminate December 31, 2008, provided either party may cancel or terminate this Agreement at any time upon at least thirty (30) days advance written notice to the other party, with accounts to be prorated, adjusted, and settled as of the date of such cancellation or termination.

4. Assignment. Neither party shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement or any of its right, title, or interest therein, or the power to execute this Agreement, without the prior written consent of the other party.

5. Amendments. No waiver, modification, or amendment of this Agreement or any part thereof shall be valid unless in writing and duly executed by both parties. A waiver of any breach hereof shall not prevent a forfeiture for any succeeding breach.

6. Entire Agreement. This Agreement contains the sole and entire agreement between the parties relating to the services provided hereunder and shall supersede any and all agreements between the parties. Any other statements or representations made by either party are void and have no force or effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Upon roll call vote, all aye.

Supervisor Sullivan noted the following bids for the Edward F. Loomis Jr. Park improvements and referred them to Engineer Rex Tolman and Highway Superintendent Eugene A. Johnson for their recommendations at our next board meeting on August 6, 2007.

H&K Services Inc.  
6585 Town Hill Road  
ConewangoValley, NY 14726 \$464,668

L.W. Parker Enterprises, Inc.  
5588 Meadows Road  
Dewittville, NY 14728 \$499,994

Angelo & Diane Terrano requested on the progress of the grant resolution filed in Mayville for the South Main Street. Attorney Joel H. Seachrist reported that the proper paperwork has been filed and bonding is being applied for.

Lee Gausman spoke on behalf of residents who reside on private property located in Loomis Bay requesting the town take over their dirt roads and maintain them. This was referred to Attorney Joel Seachrist for his consideration.

Bonnie Pacholski spoke on watershed maintenance awareness and would like the town to fund monies annually regarding water shed issues for Goose Creek. She spoke on concerns on future development and how this affects the watershed and along with environmental studies done before development is allowed.

Councilman Hajdu commented that the town budgeted for lake and watershed projects and half of that amount this year was allocated for in lake projects. He thanked her for her concerns and many of those points have actually been part of our discussion.

Shawn Blood appeared before the board regarding State Line Speedway with the problem of fireworks, overnight camping and all the other noise issues that goes along with the speedway. This was referred to Zoning Officer Charles Stafford along with Lakewood-Busti Chief John Bentley.

Highway Supervisor Eugene A. Johnson reported on paving Winch Road, Loomis Bay Road, Goose Creek Road, Demmings Road and Simmons Road.

Councilman Hazzard offered the following motion which was duly seconded by Supervisor Sullivan:

RESOLVED, that the following building permits fees be effective starting August 1, 2007:

All new residential permits (for a new residence) to be at .08/sq. ft, with a minimum cost of \$30 each. This rate to apply up to the first 1500 sq. ft., then .06/sq. ft on amounts over 1500 sq. ft.

Unoccupied buildings, i.e. sheds, garages, pool, and similar, a flat rate of \$30.

Additions to existing dwellings at the same rate as residences, with a minimum of \$30.

Commercial buildings at .10/sq.ft up to 50,000 sq ft., with .08/sq.ft. over. A minimum fee of \$100.

The Code enforcement officer would determine the amounts, moneys to be handled and receipted by the Town Clerk.

Upon roll call vote, all aye.

Lakewood-Busti Chief John Bentley reported 4,900 incidents to date.

Supervisor Sullivan noted the following correspondence:

Orr Street Pump Station and Other Projects: copies: Tolman Engineering, PLLC letter dated November 14, 2006. Memorandum and Invoice from Jamestown BPU, Randy Peterson's e-mail documenting additional work – referred to Rex Tolman for final documentation.

Nornew Inc. Notice of Intent to Drill for: Lund-Donelson Road & Bickel-South Main Street Ext.

New York State Dept. of Environmental Conservation re: SPDES General Permit for Edward F. Loomis Jr. Park.

Global Tower Partners: re: proposed tower in Town of North Harmony.

Middle Class Rebate Program for 2007

Village of Lakewood re: Bonny Milliner, 16 East Third Street, Lakewood addition to home and Gary Carvella, 11 East Summit Street, Lakewood for a storage shed.

Veracity Bulletin "Fine Print"

Zoning Board of Appeals Minutes June 25, 2007.

Southern Tier West re: Property Tax Assessment sessions  
New York State Department re: portion of US Route 62 under construction.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Sanders:

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and Hazeltine Public Library bills for Abstract No. 13 for warrant #445 to and including #528 in the amount of \$228,796.49.

Upon roll call vote, all aye.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 8:20 p.m.

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Diane M. VanDewark, Town Clerk