

REGULAR MEETING

February 2, 2009

A regular meeting of the Town Board of the Town of Busti was held on, February 2, 2009 at 6:45 p.m., at the Town Administration Building, 121 Chautauqua Avenue, Lakewood, New York with the following members present:

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

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

Those present were: Legislator Rudy Mueller, Angelo & Diane Terrano, Jessie Robbins, Carol Rasmussen, County of Chautauqua Industrial Development Agency, Lakewood-Busti Police Chief John Bentley and Highway Superintendent Melvin J. Peterson.

Carol Rasmussen, Chautauqua County of Chautauqua Industrial Development Agency appeared before the board regarding grant money for Cummins Engine.

Lakewood-Busti Police Chief John Bentley reported 865 incidents in January, 924 to date. The Lakewood-Busti Police Department will be receiving a \$25,000 grant for an automatic license plate reader which uses image processing technology to identify vehicles by their license plate numbers.

Highway Superintendent Melvin J. Peterson reported on snow plowing activity.

M. William Boiler, Supervisor Judge 8th Judicial District, Town & Village Courts awarded the town a check in the amount of \$8,050.50 for Justice Court Assistance Program which is part of the state's town and village court action plan that is funding five million throughout the state to help smaller courts purchase more modern court technology.

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

Resolved, that the town accept the bid from Moore & Myott for accounting services in the amount of \$1,875 per month.

Upon roll call vote, all aye.

Supervisor Sullivan moved the following agreement with Southwestern Central School which was duly seconded by Councilwoman Hern:

AGREEMENT

This agreement made and entered into this 2nd day of February, 2009, by and between:

TOWN OF BUSTI
121 Chautauqua Avenue
Lakewood, New York hereinafter referred to as "Town of Busti"
and
SOUTHWESTERN CENTRAL SCHOOL
600 Hunt Road, W. E.
Jamestown, New York hereinafter referred to as "Southwestern"

WITNESSETH

1. Southwestern shall be responsible for sorting tax bills provided by the Chautauqua County Department of Real Property Tax Services and for mailing the same at the school's expense;
2. Southwestern shall provide a lock box system with M & T Bank in conjunction with the tax collection done by the Town of Busti;
3. The Town of Busti shall be responsible for printing of receipts of tax bills as they are paid and/or requested at the Town of Busti;
4. Southwestern shall be responsible for providing envelopes, and postage paid envelopes for mailing receipts;
5. The Town of Busti will make daily deposits directly to the bank account maintained by Southwestern for its tax collection;
6. The Town of Busti shall provide daily reports to Southwestern of taxes collected by the Town of Busti and deposits made in Southwestern bank account which shall include the lock box payments;
7. The Town of Busti will utilize the Williamson Tax Collection System;
8. The Town of Busti shall be responsible for taking and fielding all calls with any questions about Southwestern taxes during the tax collection period;
9. The Town of Busti will provide Southwestern and the County of Chautauqua with a report of uncollected taxes at the end of the tax season;
10. The Town of Busti will prepare an alphabetical collected report to Southwestern and Chautauqua County Department of Real Property Tax Service at the end of the tax season;
11. The Town of Busti will be paid the sum of \$7,500.00 by Southwestern for the services provided by the Town of Busti to Southwestern pursuant to this understanding; which payment shall be made not later than December 1, 2009;
12. Southwestern shall pay any and all expenses associated with the purchase and installation of any computer software required by the Town of Busti to collect Southwestern School taxes.

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilwoman Hern:

RESOLVED, that Tracy Hewitt be appointed Library Manager for the Hazeltine Library.
All aye.

Supervisor Sullivan moved to approve the following Shared Highway Service Agreement with Chautauqua County:

WHEREAS, pursuant to Section 119-o of the General Municipal Law, all municipalities have the power and authority to contract with other municipalities for the performance of certain functions including, but not limited to, Shared Highway Services, and;

WHEREAS, it is hereby determined that the Town of Busti and other municipalities have machinery and equipment which is not used during certain periods, and;

WHEREAS, it is determined that the Town of Busti and other municipalities often have materials and supplies on hand which are not immediately needed, and;

WHEREAS, it is hereby determined that by renting, borrowing, exchanging, leasing or maintaining highway machinery and equipment and the borrowing or lending of materials and supplies, the Town of Busti and other municipalities may avoid the necessity of purchasing certain needed highway machinery and equipment and the purchasing of or storing a large inventory of certain extra materials and supplies, thereby saving the taxpayers money, and;

WHEREAS, it is the intent of the Town of Busti to give the highway superintendent the authority to enter into arrangements with the persons serving in similar capacities in other municipalities without the necessity of obtaining approval of the town governing board prior to the making each of these individual arrangements, and;

WHEREAS, a standard contract has been prepared which is expected to be adopted and placed into effect in other municipalities, and will grant the person holding the position comparable to that of the head of the highway department, authority to make similar arrangements, and;

WHEREAS, it is hereby determined that it will be in the best interests of the Town of Busti to be a party to such shared services arrangements; now therefore be it

RESOLVED, that the chief executive officer of Town of Busti is hereby authorized to execute an agreement to participate in a Shared Highway Services Agreement with other municipalities in Chautauqua County, and be it further

RESOLVED, that the Highway Superintendent is authorized to request from participating municipalities and approve requests from participating municipalities, shared highway services pursuant to this Shared Highway Services Agreement.

SHARED HIGHWAY SERVICES AGREEMENT

1. For purposes of this contract, the following terms shall be defined as follows:

a. "Municipality" shall mean any city, county, town or village in Chautauqua County which has agreed to be bound by a contract for shared services or equipment similar in terms and effect with the contract set forth herein.

b. "Contract" shall mean the test of this agreement which is similar in terms and effect with comparable agreements, notwithstanding that each such contract is signed only by the chief executive officer of each participating municipality filing the same, and upon such filing each filing municipality accepts the terms of the contract to the same degree and effect as if each chief executive officer had signed each individual contract.

c. "Shared Service" shall mean any service provided by one municipality for another municipality that is consistent with the purposes of intent of this contract and shall include but not be limited to:

- i. the renting, exchanging, or lending in highway machinery, tools, equipment, with or without operators;
- ii. the providing of a specific service;
- iii. the maintenance of machinery or equipment.

d. "Superintendent" shall mean, in the case of a city, the head of the department of public works; in the case of a county, the county superintendent of highways, or the person having the power and authority to perform the duties generally performed by county superintendent of highways, in case of a town, the town superintendent of highways and/or superintendent of public works.

2. The undersigned municipality has caused this agreement to be executed and to bind itself to the terms of this contract and it will consider this contract to be applicable to any municipality which has approved a similar contract and filed such contract with the Chautauqua County Department of Law.

3. The undersigned municipality by this agreement grants unto the superintendent, the authority to enter into any shared service arrangements with any other municipality or other municipalities subject to the following terms and conditions.

a. The Town of Busti agrees to rent or exchange or borrow from any municipality any and all materials, machinery and equipment; with or without operators, which it may need for the purposes of the Town of Busti. The determination as to whether such machinery, with or without operators, is needed by the Town of Busti, shall be made by the superintendent. The value of the materials or supplies borrowed from another municipality under this agreement may be returned in the form of similar types and amounts of materials or supplies, or by the supply of equipment or the giving of services of equal value; to be determined by mutual agreement of the respective superintendents.

b. The Town of Busti agrees to rent, exchange or lend to any municipality any and all

materials, machinery and equipment, with or without operators, which such municipality may need for its purposes. The determination as to whether such machinery or material is available for renting, exchanging, or lending shall be made by the superintendent. In the event, the superintendent determines that it will be in the best interests of the Town of Busti to lend to another municipality. The value of supplies or materials loaned to another municipality may be returned to the Town of Busti, by the borrowing municipality in the form of similar types and amounts of materials or supplies, or by the use of equipment or receipt of services of equal value, to be determined by the respective superintendents.

c. The Town of Busti agrees to repair or maintain machinery or equipment for any municipality under terms that may be agreed upon by the superintendent, upon such terms as may be determined by the superintendent.

d. An operator of equipment rented or loaned to another municipality, when operating such equipment for the borrowing municipality, shall be subject to the direction and control of the superintendent of the borrowing municipality in relation to the manner in which the work is to be completed. However, the method by which the machine is to be operated shall be determined by the operator.

e. When receiving the services of an operator with a machine or equipment, the receiving superintendent shall make no request of any operator which would be inconsistent with any labor agreement. All machinery and the operator, for purposes of workers compensation, liability and any other relationship with third parties, shall be considered the machinery of, and the employee of, the municipality owning the machinery and equipment.

f. The lending municipality shall be liable for any negligent acts resulting from the operation of its machinery or equipment by its own operator.

g. Each municipality shall remain fully responsible for its own employees, including but not limited to salary, benefits and workers compensation.

4. In the event a municipality wishes to rent machinery or equipment from another municipality or in the event a municipality wishes to determine the value of such renting for the purposes of exchanging shared services or a comparable value, it is agreed that the value of the shared service shall be agreed upon in advance between the superintendents of each municipality.

5. In the event machinery or equipment is damaged or otherwise in need of repair while working for another municipality, the municipality owning the machinery or equipment shall be responsible to make or pay for such repairs.

6. In the event a dispute arises relating to any repair, maintenance or shared service, and such dispute cannot be resolved between the parties, such dispute may be resolved through mediation.

7. Any municipality which is a party to this contract may revoke such contract by filing a notice of such revocation with the Chautauqua County Department of Law. Upon the revocation of such contract, any outstanding obligations shall be submitted within thirty days of such revocation.

8. Any action taken by the superintendent pursuant to the provisions of this contract shall be consistent with the duties of such official and expenditures incurred shall not exceed the amounts set forth in the town budget for highway purposes.

9. The record of all transactions that have taken place as a result of the Town of Busti participating in the services afforded by this contract shall be kept by the superintendent and a statement thereof, in a manner satisfactory to the town governing board, shall be submitted to the town board annually, as determined by the board.

10. If any provision of this contract is deemed to be invalid or inoperative for any reason, that part may be modified by the municipalities which are a party to this contract to the extent necessary to make it valid and operative, or if it cannot be so modified, then severed, and the remainder of the contract shall continue in full force and effect as if the contract had been signed with the invalid portion so modified or eliminated.

11. This contract shall be reviewed each year by the Town of Busti. This contract shall become effective upon the execution and shall terminate only upon thirty (30) days written notice to the Chautauqua County Department of Law.

12. Copies of this contract shall be sent to the Chautauqua County Department of Law. No shared services shall be conducted by the superintendent except with the Superintendent of a municipality that has completed a shared services contract and has sent a copy thereof to the Chautauqua County Department of law.

IN WITNESS THEREOF, the said Town of Busti has by order of the town, caused these presents to be subscribed by the chief executive officer, and the seal of the town to be affixed and attested by the clerk thereof, this 19th day of February, 2006.

Upon roll call vote, all aye.

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

RESOLVED, that Town Clerk Diane VanDewark be authorized to open a Money Market Account for tax collection.

Upon roll call vote, all aye.

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

RESOLVED, that the Town of Busti hold a public hearing on Monday, February 16, 2009 at 6:45 p.m. to provide information and solicit public input regarding the Community Development Block Grant program

FURTHER RESOLVED, to hold a second public hearing on Monday, March 2, 2009 at 6:45 p.m. to review the proposed project regarding the Community Development Block Grant applicant that will be submitted by the Town of Busti to the Office of Community Renewal.

Upon roll call vote, all aye.

Councilman Hajdu offered the following motion which was duly seconded by Richard Sanders to approve the Bond Anticipation Note for Ernest Levin Water 5 and Helen P. Andrews Water 7 in the amount of \$172,088 retroactive January 26, 2009:

**BOND ANTICIPATION NOTE CERTIFICATE
DATED JANUARY 26, 2009.**

CERTIFICATE OF THE SUPERVISOR OF THE TOWN OF BUSTI,
CHAUTAUQUA COUNTY, NEW YORK, AUTHORIZING THE
ISSUANCE OF AN \$172,088 BOND ANTICIPATION NOTE OF SAID
TOWN TO PAY THE COST OF A WATER DISTRIBUTION SYSTEM
TO SERVE THE TOWN OF BUSTI ERNEST LEVIN WATER
DISTRICT NO. 5 AND THE TOWN OF BUSTI HELEN P. ANDREWS
WATER DISTRICT NO. 7 IN SAID TOWN.

I, the undersigned Supervisor of the Town of BUSTI, Chautauqua County, New York (the "Town"), DO HEREBY CERTIFY:

1. Pursuant to a bond resolution dated June 18, 2007, duly adopted by the Town Board of said Town on said date, authorizing the issuance of \$172,088 bonds of said Town to pay the cost of the construction of water improvements, including mains, land or rights-in-land, and other incidental costs in connection therewith to serve the Ernest Levin Water District No. 5 and Helen P. Andrews Water District No. 7 in said Town (period of probable usefulness, 40 years) which is not an assessable improvement, and delegating to me, as chief fiscal officer, power to authorize the issuance of and to sell bond anticipation notes of said Town in anticipation of the issuance and sale of said bonds, including renewals thereof, which power is in full force and effect and has not been modified, amended or revoked, I HEREBY AUTHORIZE the issuance of a bond anticipation note of said Town in the principal amount of \$172,088 in anticipation of the sale of said bonds. Said note shall be dated January 26, 2009, shall be numbered 1, shall be of the denomination of \$172,088, shall bear interest at the rate of three and twenty nine hundredths per centum (3.29%) per annum, payable at maturity, shall mature on one year hence, January 27, 2010, and both principal of and interest on said note shall be payable in lawful money of the United States of America at JP Morgan Chase, Buffalo, New York. Such note is not a renewal note.

2. The specific object or purpose for which said note is hereby authorized to be issued is to pay the cost of the aforesaid specific object or purpose. The amount of serial bonds to be issued therefore is \$172,088.

3. No bond anticipation notes are presently outstanding or have heretofore been issued in anticipation of the sale of said bonds.

4. Such note shall be executed in the name of said Town of Busti, Chautauqua County, New York, by its Supervisor, sealed with its corporate seal, and the same shall be in substantially the form attached hereto. Such note is hereby sold at private sale to JP Morgan Chase, Buffalo, New York, at a price of not less than par and accrued interest, if any. To the best of my knowledge and belief, no officer or employee of said Town has an interest in the sale of said note prohibited by Article 18 of the General Municipal Law, as amended.

UNITED STATES OF AMERICA
STATE OF NEW YORK
COUNTY OF CHAUTAUQUA
TOWN OF BUSTI
BOND ANTICIPATION NOTE, 2007

No. 1

\$172,088

The Town of Busti, in the County of Chautauqua, a municipality of the State of New York (herein called the "Obligor"), hereby acknowledges itself indebted and for value received promises to pay to the bearer of this note the sum of two hundred one hundred seventy two thousand eighty eight dollars (\$172,088) on January 27, 2010, together with interest thereon from the date hereof at the rate of three and twenty nine hundredths per centum (3.29%) per annum, payable at maturity. Both principal of and interest on this note will be paid in lawful money of the United States of America at JP Morgan Chase, Buffalo, New York.

This note may not be redeemed at any time prior to maturity.

This note may not be converted into registered form.

This note is one of a total authorized issue of \$172,088 issued pursuant to proceedings duly adopted by the Finance Board of the Obligor, on June 18, 2007, and also pursuant to: "BOND ANTICIPATION NOTE CERTIFICATE DATED JANUARY 26, 2009. CERTIFICATE OF THE SUPERVISOR OF THE TOWN OF BUSTI, CHAUTAUQUA COUNTY, NEW YORK, AUTHORIZING THE ISSUANCE OF AN \$172,088 BOND ANTICIPATION NOTE OF SAID TOWN TO PAY THE COST OF A WATER DISTRIBUTION SYSTEM TO SERVE THE TOWN OF BUSTI ERNEST LEVIN WATER DISTRICT NO. 5 AND THE TOWN OF BUSTI HELEN P. ANDREWS WATER DISTRICT NO. 7 IN SAID TOWN.

The faith and credit of the Obligor are hereby irrevocably pledged for the punctual payment of the principal of and interest on this note according to its terms.

It is certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of New York to exist, to have happened and to have been performed precedent to and in the issuance of this note, exist, have happened and have been performed, and that this note, together with all other indebtedness of the Obligor is within every debt and other limit prescribed by the Constitution and laws of such State.

IN WITNESS WHEREOF, the Obligor, in accordance with the proceedings authorizing this note, has caused this note to be signed and its corporate seal to be hereunto affixed as appears below and this note to be dated as of January 26, 2009.
Upon roll call vote, all aye.

Supervisor Sullivan noted the following reports and correspondence:

- Chautauqua County Department of Finance re: monies paid to town during 2008.
- Clerk's annual report for 2008
- Ashville Fire District regarding fire department appointments and meetings.
- Time Warner Cable re: agreements with programmers.
- Kavinoky/Cook Attorneys at Law re: Ashford Jamestown Corp v. Town of Busti for two Orders and Settlement Agreements
- Thank you from Timothy Galaster regarding cleaning of office building.
- Chautauqua County Agricultural & Farmland Protection Board regarding "Agricultural District Benefits".
- State of New York Public Service Commission in the Matter of Reviewing and Amending the electric Submetering Regulations, 16 NYCRR Part 96.
- Time Warner Cable re: rate changes effective March 1, 2009.

Councilman Hazzard offered the following affidavit for Stoneman Park which was duly seconded by Councilman Hajdu:

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) ss.:

KATHLEEN A. SULLIVAN, being first duly sworn, deposes and says:

1. That she is Supervisor of the Town of Busti, Chautauqua County, New York (the "Town").
2. That the Town holds a Mortgage from the County of Chautauqua Industrial Development Agency in the amount of \$42,000.00, which was recorded in the Chautauqua County Clerk's Office on January 18, 1989 in Liber 1855 of Mortgages at page 99 (the "Mortgage"), and encumbered all of what is now known as the Stoneman Business Park (the "Park") in the Town, designated on the official tax map of Chautauqua County as Sections 385.00, Block 1, Lots 44, 45.1, 45.2, and 45.3.
3. That the Town granted a Partial Release of Mortgaged Premises, recorded in the

Chautauqua County Clerk's Office on August 21, 2001 in Liber 2473 of Mortgages at page 930, which released from the Mortgage a parcel that is part of Section 385.00, Block 1, Lot 45.1, where at present the Southern Tier Brewery and other businesses are located in the "speculation building".

4. That the Town granted another Partial Release of Mortgaged Premises, recorded in the Chautauqua County Clerk's Office on February 17, 2004 in Liber 2717 of Mortgages at page 79, which released from the Mortgage the parcel now designated as section 385.00, Block 1, Lot 45.3; an identical Partial Release of Mortgaged Premises covering the same parcel was recorded March 12, 2004 in Liber 2721 of Mortgages at page 705.
5. That the Town granted another Partial Release of Mortgaged Premises, recorded in the Chautauqua County Clerk's Office on February 19, 2004 in Liber 2717 of Mortgages at page 487, which released from the Mortgage the parcel now designated as Section 385.00, Block 1, Lot 45.2.
6. That the Mortgage continues to encumber the remainder of the Park.
7. That the Town holds title to an unnamed paper street traversing Section 385.00, Block 1, Lot 44 in the eastern part of the Park (the "Paper Street").
8. That the road within the Park known as Stoneman Circle is a town highway, operated and maintained by the Town.
9. That at the request of the Chautauqua County Industrial Development Agency (the "CCIDA"), the Town has agreed to grant a partial release of mortgage for the eastern part of the Park and to convey title to the Paper Street to the CCIDA, by instruments recorded concurrently herewith.
10. That as consideration for the partial release of mortgaged premises the CCIDA has paid and the Town has accepted the sum of Twenty Thousand Dollars (\$20,000.00), in satisfaction of the Mortgage except for the nominal amount of Ten Dollars (\$10.00).
11. That Town will continue to hold the Mortgage covering the remainder of the Park in order to preserve bargaining position with the CCIDA and County of Chautauqua for the eventual conversion of Stoneman Circle into a County road.
12. That this affidavit is executed with the intention (a) that any grantee of the Paper Street and any parcel formerly covered by the Mortgage can rely upon the authority of the undersigned to have full right and authority to convey clear title to same, and (b) to memorialize the facts stated above.

Upon roll call vote, all aye.

Jessie Robbins noted that the next Hamlet Busti Development meeting will be on February 19, 2009.

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

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation and Hazeltine Public Library bills for Abstract No. 26 from warrant #929b to and including #945b in the amount of \$10,197.81 and Abstract No. 2 from warrant #10 to and including #64 in the amount of \$290,157.94.

Upon roll call vote, all aye.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 7:10 p.m.

Diane M. VanDewark, Town Clerk