

REGULAR MEETING

May 4, 2009

A regular meeting of the Town Board of the Town of Busti was held on May 4, 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
Councilman Paul R. Hazzard
Councilman Richard A. Sanders
Councilwoman Marsha L. Hern
Councilman Lyle T. Hajdu - absent

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

Those present were: Angelo & Diane Terrano, Jessie Robbins, Tim Young, Warren VanDewark, Wendy Gesaman, Jack Knowlton, Lakewood-Busti Police Chief John R. Bentley, Zoning Officer Charles Stafford and Highway Superintendent Melvin J. Peterson.

Jack Knowlton appeared before the board regarding the burial placement for Roy Nelson in the Busti Cemetery which was referred to Attorney Joel H. Seachrist.

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

RESOLVED, that Jack Knowlton be authorized to purchase three replacement signs for Busti Cemetery from Chautauqua Signs.

All aye.

Wendy Gesaman appeared before the board regarding property she wishes to purchase on Second Avenue in Cottage Park (384.12-4.34).

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

RESOLVED, that the town accept the bid of \$2,000 from Wendy Gesaman for the parcel on Second Avenue (38.12-4.34) with the stipulation that the house be removed within one year of the date of the recording of the property and for each calendar month that it is not down there will be a \$100 charge after that.

Upon roll call vote, all aye.

Lakewood-Busti Police Chief John Bentley reported 512 incidents for April with 3,235 to date.

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

RESOLVED, that Michael R. Morganti be appointed part-time Court Officer for the town at the rate of \$16.97 per hour.
Upon roll call vote, all aye.

Highway Superintendent Melvin Peterson reported that he will publicize to hire a highway employee. He also noted the town cleanup done by the highway department in the hamlet on Saturday, May 2, 2009. Sidewalks around the Busti Memorial will be installed along with new street signs.

Supervisor Sullivan noted the speed request from John R. Bremmer, P.E., Chautauqua County Department of Public Facilities for Baker Street Extension.

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

RESOLVED, that the town approve the speed limit on Baker Street Extension (County Road 332) between Shadyside Road and 0.23+ mile west of Howard Avenue/Garfield Road intersection to 45 mph.

Supervisor Sullivan, aye
Councilman Hazzard, aye
Councilman Sanders, nay
Councilwoman Hern, aye.
Approved.

Supervisor Sullivan noted the letter from Rebecca Jean Anderson to purchase lots on First and Second Streets (384.12-4-20, 21, 30 & 31).

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

RESOLVED, that the town table the offer to purchase lots from Rebecca Jean Anderson until further review by our town attorney.
Upon roll call vote, all aye.

Angelo & Diane Terrano asked the board to consider naming the South Main Street water extension project in the name of Dale C. Robbins.

Councilman Sanders offered the following motion that Supervisor Sullivan be authorized to sign the Agreement with the Chautauqua Lake Association, Inc. which was duly seconded by Councilwoman Hern:

AGREEMENT

Made this 4th day of May, 2009 by and between:

CHAUTAUQUA LAKE ASSOCIATION, INC.
429 East Terrace Avenue
Lakewood, New York 14750

hereinafter referred to as the "Association"
and
TOWN OF BUSTI
hereinafter referred to as the "Municipality"

The Association is a Not-for-Profit New York Corporation with a stated purpose to protect public rights, decencies, pleasures and amenities of Chautauqua Lake, and its tributaries, streams and keeping the same clean, and to promote game fishing, boating, tourism and recreational uses and possibilities of the Chautauqua Lake basin.

During the past several years growth of noxious weeds and algae in Chautauqua Lake has seriously jeopardized the use of said lake for recreational and tourism purposes, has created potential health hazards and has contributed to the build up of unsightly and odoriferous shoreline debris.

The Association is the only organization, public or private, which maintains Chautauqua Lake. The Association engages in permitted herbicide and mechanical weed harvesting operation, shoreline clean up and monitors lake conditions.

Chautauqua Lake contributes greatly to the economic, social and cultural base and stability of Chautauqua County and the municipality. It is therefore advantageous to the municipality and its residents to do whatever possible to protect and maintain Chautauqua Lake.

Therefore, the municipality, pursuant to authority vested in it by Law, wishes to grant financial and/or in-kind assistance to the association for the association's 2009 lake maintenance program.

In consideration of the terms and conditions hereafter express, the parties hereto agree as follows:

1. The Association hereby agrees to undertake a lake maintenance program during the calendar year 2008.

2. The municipality hereby agrees to pay to the Association the sum of ten thousand dollars (\$10,000.00) for weed control for the Association's 2009 lake maintenance program.

(a) The sum of ten thousand dollars (\$10,000.00) upon execution of this agreement and submission of a municipality detailed claim voucher in the name specified by the Municipality.

3. Prior to any payment by the municipality to the Association, the Association shall submit to the Municipality a fully itemized Municipality claim voucher. In addition, the municipality shall have the privilege to examine the records of the Association at any time during the term of this agreement and for a period of three years following the termination hereof, for the purposes of verification and audit of financial and program activities. In addition, whenever practical, the Association shall comply with the competitive bidding provision and procedures set forth in Article 5-A of the General Municipal Law.

4. It is expressly understood and agreed that for the objects and purposes of this agreement, the term "weed" shall include all noxious plants vascular, algae and

otherwise, and that any governmentally sanctioned program of aquatic ecological control which includes weed and/or algae control and for which the association holds and possesses all necessary and current permits from the New York State Department of Environmental Conservation, may be considered an appropriate and acceptable program for the objects and purposes of this agreement.

5. The association acknowledges that it is an independent corporate entity to, and not an employee, servant or agent of, the municipality, with the municipality having no voice whatsoever, except as provided herein, in methods, materials or equipment used, or the areas of Chautauqua Lake selected for treatment under the aforesaid lake maintenance program, the municipality's sole interest being the public benefit from said lake maintenance program and insuring that the municipality's funds are used exclusively for the objects and purposes herein set forth.

6. The association shall indemnify and hold the municipality harmless from any liability, claim, demand, or judgment arising from the association's carrying out of its lake maintenance program and shall maintain in full force and effect the following policies of insurance for the purposes of coverage only and not for payment of premium:

(a) Comprehensive General Liability Insurance covering product/operations for the term of this agreement and for a term of one year from the termination date of this agreement and further covering the hold harmless provisions of this agreement with a single limit coverage of at least \$300,000 for bodily injury and \$50,000 for property damage.

(b) Workers Compensation Insurance in amount and forms at least equal to the minimum coverage, if any, required by the State of New York, for any employee of the association for whom coverage is mandated by law.

Prior to commencing performance of the terms of this agreement, the association shall, if requested, exhibit to the municipality proof of compliance with the foregoing requirements. The association shall notify in writing the municipality of any cancellation, termination or modification of the insurance herein required.

7. The municipality hereby reserves the option to terminate or cancel this agreement, in whole or in part, in the event that the association fails to comply with the terms and conditions of this agreement.

8. This agreement shall terminate December 31, 2009.

The parties hereto have made and executed this agreement on the day, month and year first above written.

TOWN OF BUSTI
Upon roll call vote, all aye.

CHAUTAUQUA LAKE ASSOCIATION, INC.

Supervisor Sullivan noted resolution from Benefits Plus to comply with the Children's Health Insurance Program Reauthorization Act of 2009 and offered the following resolution which was duly seconded by Councilman Hazzard:

The undersigned, being all of the members of the Board of directors of Town of Busti (the "Employer"), hereby adopt the following resolution by unanimous consent and direct that this Consent Resolution be entered in the minute books of the Employer.

WHEREAS, the Employer previously adopted a Code Section 125 plan, referred to as the Flexible Benefits Plan (the "Plan");

WHEREAS, effective April 1, 2009, the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act") permits a Plan to allow special enrollment for eligible but not enrolled employees or dependent child or either (1) lose coverage under a Medicaid or a State Children's Health Insurance Plan (SCHIP) under titles SIX and SSI of the Social Security Act, respectively, or (2) become eligible for group health plan premium assistance under Medicaid or SCHIP ("Special Enrollment Right"); and

WHEREAS, effective April 1, 2009, the Employer desires to amend the Plan as set forth in the attached Summary of Material of Modifications to allow for a special Enrollment Right that is consistent with the requirements set forth in the Act; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors has hereby reviewed the attached Summary of Material Modifications and does hereby approves the adoption of the Special Enrollment as set forth therein;

BE IT FURTHER RESOLVED that the officers of the Employer are authorized and directed to take any and all action as may be necessary to effectuate this Resolution. Upon roll call vote, all aye.

Supervisor Sullivan noted that the town has received modifications for the Comprehensive Plan from Nussbaumer & Clark, Inc. and Peter J. Smith & company and are waiting for notification from Paradigm at our next meeting on May 18, 2009.

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

RESOLVED, that Randy Erickson be authorized to attend the NYS Department of Agriculture & Markets dog training session in Webster, New York June 2nd & June 3rd at a cost of \$50 plus mileage.

Upon roll call vote, all aye.

Supervisor Sullivan noted the engineering plans from Tolman Engineering, PLLC for Park Street Extension & Garfield Road Water Main Projects.

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

RESOLVED, that the town approve the plans for the Park Street and Garfield Road Water main projects and that the Supervisor be authorized to make payment of \$200 for the application of approval of plans for public water supply improvements.
Upon roll call vote, all aye.

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

RESOLVED, that the town go into executive session to discuss selling real estate property.
Upon roll call vote, all aye.

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

RESOLVED, that the board return from executive session.
All aye.

Supervisor Sullivan noted the following correspondence:

Paradigm Liaison Services re: Free pipeline safety emergency response program
May 7, 2009.

Zoning Board of Appeals Minutes April 22, 2009.

Notice of Public Hearing, Village of Lakewood for Bonny Milliner, 16 East Third Street to construct a deck.

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

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and the Hazeltine Public Library for Abstract No. 8 from warrant #299 to and including #330 in the amount of \$12,484.97

Upon roll call vote, all aye.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 8:15 p.m.

Diane M. VanDewark, Town Clerk