

REGULAR MEETING

August 1, 2011

A regular meeting of the Town Board of the Town of Busti was held on August 1, 2011 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 Jesse M. Robbins
Councilwoman Marsha L. Hern
Councilman Richard A. Sanders
Councilman Kenneth J. Lawton

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

Present at the meeting were: Angelo & Diane Terrano, Richard Thor, Tim Young, William Isreal, Todd Allen, Richard Weikel, Lakewood-Busti Police Chief John Bentley, and Highway Superintendent Melvin J. Peterson.

Supervisor Sullivan noted that no bids were received for the 2000 John Deere four wheel drive utility tractor, hydrostatic transmission, quick detach loader, 72 inch belly mower. The mower will be advertised for bids returnable August 15, 2011.

Supervisor Sullivan noted the following bids for a 30' x 50' pole constructed pavilion/tin roof at Edward F. Loomis, Jr. Park:

Richard Finch Construction
4059 Waterboro Road
Kennedy, NY \$21,000

Burkholder Construction LLC
P. O. Box 205
Panama, NY \$14,138

H & K Services Inc.
12025 Leon Road
Leon, NY \$23,500

B & W. Contracting
PO Box 374
Ashville, NY \$16,004

Edward Sherman Construction
553 Buffalo Street
Jamestown, NY \$24,890

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

RESOLVED, upon recommendation of Highway Superintendent Melvin J. Peterson the town accept the bid from Burkholder Construction in the amount of \$14,138. Supervisor Sullivan noted that he has provided the town with New York State Workers' Compensation, Certificate of Liability Insurance and Certificate of Insurance coverage under the New York State Disability Benefits Law. It was noted that he has previously completed work in the City of Jamestown.

Upon roll call vote, all aye.

Discussion followed by the board and those present regarding the foot bridge at Briarwood Drive. No action was taken by the board.

Lakewood-Busti Police Chief John Bentley noted 903 incidents for July with a total of 6,130 to date.

Highway Superintendent Melvin J. Peterson noted that six horse drawn buggy signs have been placed in the town. The highway department is helping Town of Kiantone with blacktopping.

Councilman Sanders moved the following agreement which was duly seconded by Councilwoman Hern:

AGREEMENT

Made this 1st day of August, 2011 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 2011 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 2011.

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 2011 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, 2011.

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

Upon roll call vote, all aye.

Supervisor moved the following resolution and agreement for Family Church of the Southern Tier which was duly seconded by Councilman Sanders:

WHEREAS, the Town Board of the Town of Busti, acting as Commissioners of the Town of Busti Sewer District No. 1, entered into an Outside User Agreement on or about June 21, 2010 with the Family Church of the Southern Tier, pursuant to which the District provides wastewater collection services to the Church, and

WHEREAS, the Church has been unable to make certain monthly payments for a one-time connection fee of \$30,000 as required by the Agreement, and

WHEREAS, the Town Board finds it in the best interest of the Town and District to amend the Agreement to permit the Church to pay the connection fee in 36 installments of \$833.33,

NOW, THEREFORE, BE IT RESOLVED

RESOLVED, that the Town Board, acting as Commissioners of the Town of Busti Sewer

District No. 1, hereby approves an amendment to the Outside User Agreement dated June 21, 2011, and authorizes the Supervisor to sign an amendment on behalf of the Sewer District No. 1 which shall be in substantially the same form as the attached agreement.

TOWN OF BUSTI, CHAUTAUQUA COUNTY, NEW YORK	AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF BUSTI SEWER DISTRICT NO. 1 AND THE FAMILY CHURCH OF THE SOUTHERN TIER, AN OUT OF DISTRICT USER, RELATING TO THE PROVISION OF WASTEWATER COLLECTION SERVICES
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This AGREEMENT, made this _____ day of _____, 2011, by and between the Town of Busti Sewer District No. 1 (the "DISTRICT"), a municipality organized and existing pursuant and to the laws of the State of New York, whose principal office is located at 121 Chautauqua Avenue, Lakewood, New York, and an out-of-district user, the Family Church of the Southern Tier, 3105 Garfield Road, within the Town of Busti (the "USER"), witnesseth

WHEREAS, the parties hereto on or about June 21, 2010, duly entered into an agreement for the DISTRICT to provide wastewater collection services to the USER (the "Agreement"), which provided, among other things, that the USER would pay a one-time connection fee of \$30,000.00 payable in twelve (12) monthly installments of \$2,500.00 payable on the fifteenth of each month beginning June 15, 2010, and

WHEREAS, USER has found the payment of \$2,500.00 each month onerous and has not made such payments, and

WHEREAS, the USER has accepted the DISTRICT'S proposal to modify the term to 36 months with the annual payment being reduced to \$833.33, and

WHEREAS, the Town Board of the Town of Busti acting on behalf of the DISTRICT after due deliberation, finds it in the best interest of the Town and DISTRICT to enter into an amendment to the Agreement,

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, the Agreement be and the same hereby is amended to provide as follows:

1. Section C of Article II – PAYMENT" is hereby amended to provide as follows:

C. The USER shall also be responsible to pay as a one-time connection fee to the DISTRICT the amount of \$30,000.00, which amount shall be held in and used as part of the DISTRICT's operations and

maintenance fund, and which shall be paid in thirty-six (36) monthly installments of \$833.33, payable on the fifteenth of each month beginning July 15, 2011.

2. The Supervisor of the Town of Busti has executed this Agreement on behalf of the DISTRICT pursuant to a Resolution adopted by the Town Board of the Town of Busti at a regular meeting thereof held on August 1, 2011.

3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals.

By: Rev. Timothy W. Stahlman

BUSTI SEWER DISTRICT NO. 1

Upon roll call vote, all aye.

By: Kathleen A. Sullivan

Supervisor

Supervisor Sullivan noted request from Court Clerk Elizabeth Davis to attend the 2011 Annual Conference for New York State Association of Magistrates Court Clerks.

Councilman Sanders moved the following motion which was duly seconded by Councilman Robbins:

RESOLVED, that Elizabeth Davis be authorized to attend the annual conference on September 25th-28th with reimbursement for mileage and lunch on those days attending.

Upon roll call vote, all aye.

Councilman Sanders made the following resolution which was duly seconded by Supervisor Sullivan:

General Municipal Law 239-m Referral Exemption Agreement

Pursuant to NYS Municipal Law 239-m (GML 239-m), municipalities shall, before taking final action on proposed actions, refer certain actions to the county planning agency for intercommunity or county-wide considerations. In our case, the Chautauqua County Department of Planning & Economic Development (CCPED) has been granted the powers of GML 239-m Review by the County Planning Board. The Law also states that the county planning agency may enter into an agreement with the referring bodies to provide that certain proposed actions are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

The actions that this agreement exempts from County GML 239-m Review are the following:

Residential Area Variances

* Rear & Side Building Setbacks

* Fences

Special Use Permits

* Renewals

- * Decks
- * Minimum Building Size
- * Minimum Building Lot Size
- * Size & Height of Garages
- * Number of Storage Sheds
- * Subdivision of Lots

Upon roll call vote, all aye.

Supervisor Sullivan noted the following reports and correspondence:

State of New York Department of Agriculture & Markets re: Dog Control Inspection Report 7/8/2011.

Receipt of Bond Anticipation Note Renewal for South Main Street Extension \$128,000 (clerk's office).

New York State Department of Taxation & Finance re: Final State Equalization Rate: *100.00*.

Attorney Joel H. Seachrist re: Family Church of Southern Tier connection to Sewer District No. 1.

Attorney Joel H. Seachrist re: Johnson Property on Kortwright Road.

Zoning Board of Appeals Minutes July 27, 2011.

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. 12 from warrant #496 to and including warrant #551 in the amount of \$170,922.86.

Upon roll call vote, all aye.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 7:07 p.m.

Diane M. VanDewark, Town Clerk