

REGULAR MEETING
August 6, 2012

A regular meeting of the Town Board of the Town of Busti was held on August 6, 2012 at 6:45 p.m., at the Town Administration Building, 121 Chautauqua Avenue, Lakewood, New York with the following members present:

Supervisor Jesse M. Robbins
Councilman Richard B. Thor
Councilman Todd M. Hanson
Councilman Kenneth J. Lawton
Councilman Richard A. Sanders

Supervisor Robbins 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, Laurie Robbins, Tim Young, Loren & Gloria Parker, Attorney Joel H. Seachrist, Highway Superintendent Melvin J. Peterson, Busti-Lakewood Police Chief John Bentley and Post Journal Reporter David Phillips.

Tim Young reminded the board that the Busti Development Group is having their 5th Annual Chicken Barbecue on Saturday, August 18th.

Highway Superintendent Melvin Peterson reported on the highway department did stream restoration in Cottage Park, paving on Wellman Road and assisted the Town of Kiantone and Village of Lakewood with paving roads.

Busti-Lakewood Police Chief John Bentley presented the July report with 6,925 incidents to date.

Supervisor Robbins noted it was 7:00 p.m. and time to open the public hearing on Local Law No. 3-2012, entitled "A local law to provide for the codification of the local laws, ordinances and certain resolutions of the Town of Busti into a municipal code to be designated the Code of the Town of Busti" which was duly seconded by Councilman Lawton:

All aye.

Proof of publication was placed on file.

No persons were present to speak on this local law.

Supervisor Robbins moved to close the public hearing which was duly seconded by Councilman Hanson:
All aye.

Supervisor Robbins moved the following resolution to accept the Negative Declaration for Local Law No. 3 which was duly seconded by Councilman Sanders:

WHEREAS, the Town of Busti has proposed Local Law No. 3 of 2012, which would codify the ordinances, local laws and certain resolutions heretofore enacted by the Town Board, and

WHEREAS, the proposed law has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a long Environmental Assessment Form, and

WHEREAS, Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act requires this Board to determine and give notice of the environmental impact of the proposed local law, and

WHEREAS, the Board has determined that the proposed law will not have a significant

environmental impact,

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby issues a Notice of Determination of Non-Significance, also known as a Negative Declaration, for the proposed Local Law No. 3 of 2012.

Upon roll call vote, all aye.

Supervisor Robbins moved to adopt the following resolution which was duly seconded by Councilman Hanson:

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Busti for a public hearing to be held by said Board on August 6, 2012 at the Town Hall, 121 Chautauqua Avenue, Lakewood, to hear all interested parties on a proposed Local Law to codify the ordinances, local laws, and certain resolutions heretofore adopted by the Town Board, and

WHEREAS, notice of said public hearing was duly published in the Jamestown Post-Journal and posted in the Town Clerk's office, and

WHEREAS, said public hearing was duly held on August 6, 2012 at the said time and place and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof, and

WHEREAS, the Board has determined that the adoption of the local law is a Type I action for purposes of the State Environmental Quality Review Act, has prepared an Environmental Assessment Form, and has duly adopted a Negative Declaration finding that the proposed Local Law will not have significant adverse environmental impacts, and

WHEREAS, the Town Board, after due deliberation, finds it in the best interests of the Town to adopt said Local Law,

NOW, THEREFORE, the Town Board of the Town of Busti hereby adopts said Local Law as Local Law No. 3 of 2012, a copy of which is attached hereto and made a part hereof, and the Town Clerk hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Busti, and to give due notice of the adoption of the Local Law to the Secretary of State.

LAW NO. 3 of 2012

ARTICLE I

Adoption of Code

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of Busti, as codified by General Code, and consisting of Chapters 1 through 405, together with an Appendix, shall be known collectively as the "Code of the Town of Busti," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Town of Busti" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Town Board of the Town of Busti, and it is the intention of said Board that each such

provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

§ 1-3. Inconsistent enactments repealed.

Except as provided in § 1-4, Enactments saved from repeal; matters not affected, below, all local laws and ordinances or parts of local laws and ordinances inconsistent with the provisions contained in the Code adopted by this local law are hereby repealed; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Town of Busti which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Busti prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Busti or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the Town of Busti.
- D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Busti.
- E. Any local law or ordinance of the Town of Busti providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Busti or any portion thereof.
- F. Any local law or ordinance of the Town of Busti appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Busti or other instruments or evidence of the Town's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any local law or ordinance relating to salaries and compensation.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any local law or ordinance relating to or establishing a pension plan or pension fund for Town employees.

- M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the Town.
- N. Any local law adopted subsequent to 4-9-2012.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Busti and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified by the Town Clerk of the Town of Busti by impressing thereon the Seal of the Town, and such certified copy shall remain on file in the office of said Town Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Busti" or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Town Board deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Busti required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances or resolutions until such changes, local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code book; supplementation.

Copies of the Code, or any chapter or portion of it, may be purchased from the Town Clerk, or an authorized agent of the Clerk, upon the payment of a fee to be set by resolution of the Town Board. The Clerk may also arrange for procedures for the periodic supplementation of the Code.

§ 1-10. Penalties for tampering with Code.

Any person who alters or tampers with the Code of the Town of Busti in any manner whatsoever which will cause the legislation of the Town of Busti to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Busti, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection C hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the Town Board that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.
- B. Specifically, throughout the Code, the title “Zoning Officer” or “Building Inspector” has been revised to “Code Enforcement Officer.”
- C. In addition, the amendments and/or additions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Town of Busti, such local law to be entitled “General Provisions, Article I, Adoption of Code,” and the sections of this local law shall be numbered §§ 1-1 to 1-13, inclusive.

§ 1-13. When effective.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

Supervisor Robbins, aye
Councilman Thor, aye
Councilman Hanson, aye
Councilman Lawton, aye
Councilman Sanders, aye

Councilman Lawton moved the following resolution authorizing the Chautauqua County Industrial Development Agency to record a discharge of mortgage affecting the Stoneman Business Park which was duly seconded by Councilman Sanders:

WHEREAS, the Town of Busti holds a certain mortgage from the Chautauqua County Industrial Development Agency (CCIDA), recorded in the Chautauqua County Clerk’s Office on January 18, 1989 in Liber 1855 of Mortgages at page 99 (the “Mortgage”), which covers all of the General George Stoneman Business Park except for parcels described in several partial releases executed since 2001; and

WHEREAS, the Mortgage is fully satisfied except for a balance of \$10.00; and

WHEREAS, the CCIDA has requested that the Town discharge the remainder of the business park from the Mortgage; and

WHEREAS, in 2008 then Supervisor Kathleen Sullivan executed a Discharge for the Mortgage,

which the CCIDA has held in escrow;

NOW, THEREFORE, BE IT

RESOLVED, that the Town waives payment of any balance due on the Mortgage and authorizes CCIDA to record the Discharge of Mortgage it now holds in escrow.

Upon roll call vote,

Supervisor Robbins, aye

Councilman Thor, aye

Councilman Hanson, aye

Councilman Lawton, aye

Councilman Sanders, aye.

Supervisor Robbins moved to renew Bond Anticipation Note in the amount of \$178,085 South Main Water (\$51,500) and Huntington Woods Drainage District No. 2 (\$126,585) retroactive July 25, 2012 which was duly seconded by Councilman Thor:

BOND ANTICIPATION NOTE CERTIFICATE DATED JULY 25, 2012.

CERTIFICATE OF THE SUPERVISOR OF THE TOWN OF BUSTI, CHAUTAUQUA COUNTY, NEW YORK, AUTHORIZING THE ISSUANCE OF A \$178,085 BOND ANTICIPATION NOTE OF SAID TOWN TO PAY THE COST OF (A) 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, and (B) A RETENTION POND AND APPURTENANT FACILITIES FOR THE HUNTINGTON WOODS DRAINAGE DISTRICT 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) a bond resolution dated June 18, 2007, duly adopted by the Town Board of said Town on said date, authorizing the issuance of \$202,650 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 (b) a bond resolution dated November 8, 2006, duly adopted by the Town Board of said Town on said date, authorizing the issuance of \$100,000 bonds of said Town to pay the cost of the construction of a retention pond and appurtenant facilities, including incidental improvements and expenses in connection therewith, for Huntington Woods Drainage District in said Town (period of probable usefulness, 30 years) which is not an assessable improvement, both 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 combined amount of \$178,085 in anticipation of the sale of said bonds. Said note shall be dated July 25, 2012, shall be numbered 4, shall be of the denomination of \$178,085, shall bear interest at the rate of one and ninety eight hundredths per centum (1.98%) per annum, payable at maturity, shall mature on July 24, 2013, 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. Provided that such note may be redeemed prior to maturity on or after September 24, 2012 upon 5 days notice, at par.

2. The objects or purposes for which said note is hereby authorized to be issued is to pay the cost of the projects set forth in the schedule below:

\$126,585 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). The amount of serial bonds authorized to be issued therefore is \$202,650. Such \$126,585 is issued for the purpose of renewing the outstanding \$126,585 portion of the aforesaid \$202,650 note.

\$51,500 to pay the cost of the construction of a retention pond and appurtenant facilities, including incidental improvements and expenses in connection therewith, for Huntington Woods Drainage District in said Town (period of probable usefulness, 30 years). The amount of serial bonds authorized to be issued therefore is \$100,000. Such \$51,500 is issued for the purpose of renewing the outstanding \$51,500.

3. 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.
Upon roll call vote, all aye.

Councilman Lawton made the following motion which was duly seconded by Councilman Thor:

RESOLVED, that Assessor Randall G. Holcomb be authorized to attend the Annual Meeting and Seminar on Assessment Administration in Lake Placid, New York, from September 29th – October 3rd, 2012. The cost will be approximately \$900 plus mileage, however this is reimbursed to the town by the State of New York Office of Real Property Services because this is mandatory continuing education credits for Assessor.

Upon roll call vote, all aye.

Councilman Lawton made the following motion which was duly seconded by Supervisor Robbins for the sale of town property:

TOWN OF BUSTI
ESTABLISHING POLICY FOR SALE OF TOWN-OWNED PROPERTY

WHEREAS, the Town Board desires to establish a general policy to guide itself when the Town has elected to sell or has received a bid to purchase property owned by the Town, so that the Town Board's actions are consistent from one property to another, and

WHEREAS, despite the specificity of the policy set out below, to fully represent the best interests of the Town and its taxpayers the Town Board reserves the right to consider extenuating circumstances beyond those contemplated by the policy that could affect the Town Board's evaluation of bids and/or sale price of a particular property

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board shall follow the following procedure upon the receipt of an offer to purchase town-owned property:

1. Offer is received at Town Building.
2. If the Town Board is interested in selling the property, details of the property are summarized including information such as the following:

- Property assessment;
- Amount of tax arrears, if any;
- Estimated market value;
- Town's investment in the property, if any;
- Estimated demolition costs, if any;

Prepare map of parcel(s); and
Recent history of parcel use and ownership

3. A Town Board representative conducts a site visit.
4. The purchaser is requested to disclose their plans for the property.
5. The Town Clerk will publish notice that the Town will accept bids on the property in accordance with acceptable public notification procedures and send a copy of such notice to all property owners within 250 feet of the affected parcel.
6. While weighing the bids received, the Town Board will give consideration to the community impact of each bid, including reduction of community blight, potential for improvement of the tax base, neighborhood beautification, and other similar facts deemed relevant by the Town Board.
7. The most suitable bid is accepted and approved by the Town Board. The Board reserves the right to reject any and all bids for any reason.
8. The details of the sale are recorded with the buyer bearing all closing and recording costs.
Upon roll call vote, all aye.

Councilman Sanders moved the following legal notice for the sale of real property for each lot or a total bid for all lots according to the resolution establishing the policy for sale of town-owned property which was seconded by Councilman Thor:

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Busti will review sealed bids, which must be received by the Town Clerk on September 4, 2012 at 2:30 p.m. at 121 Chautauqua Avenue, Lakewood, New York, to sell all right, title and interest of the Town in and to the following lots of real property located in the Cottage Park area:

SBL	384.12-4-18
SBL	384.12-4-20
SBL	384.12-4-21
SBL	384.12-4-30
SBL	384.12-4-31
SBL	384.12-4-32

Bids are to be submitted in an envelope plainly marked "Cottage Park Lots." Each bid shall include statement from the bidder of his plans for the properties and shall provide a separate bid amount for each lot the bidder wishes to purchase.

There shall be no upset price, but the Town reserves the right to reject the highest bid and all other bids and to waive any informality in any bid. Furthermore, while weighing the bids, the Town Board will give consideration to the community impact of each bid, including its likelihood to reduce community blight, its potential for improvement of the tax base, neighborhood beautification, and other similar factors deemed relevant by the Town Board, and the otherwise high bid may be rejected on those grounds.

The lots will be sold in "as is where is" condition, and neither title search nor survey will be provided. It is the responsibility of any prospective bidder to investigate and ascertain the condition of the lots being sold prior to the date of bidding as the Town is making no representations or warranties, expressed or implied, with respect to the suitability or fitness of the lots for the purpose for which they may be used by the purchaser.

The bids will be opened at a regular meeting of the Town Board of the Town at 6:45 p.m. on September 4, 2012, at 121 Chautauqua Avenue, Lakewood, New York.
Upon roll call vote, all aye.

Supervisor Robbins noted the following correspondence:

State of New York filing of Local Law #2 2012.

David See Surveyors re: Skye Petroleum Inc., Daniel Byler Lease, Farmington Township, Warren Co., Pennsylvania, 6 wells Yoder #2, 10, 11, 14, 20, 21.

Time Warner Cable re: agreements with programmers.

NYS Deferred Compensation Board re: disclosure of fees and expenses by retirement plans.

Zoning Board of Appeals Minutes July 25, 2012.

Chautauqua Watershed Conservancy regarding town property located in the watershed for Chautauqua Lake.

Notice of Petition re: Emkey Gathering, LLC for against Board of Assessment Review on file at clerk's office.

Supervisor Robbins made the following motion which was duly seconded by Councilman Lawton:

RESOLVED, that Supervisor Robbins be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and the Hazeltine Public Library for Abstract No. 13 from warrant #553 to and including warrant #621 in the amount of \$77,759.66.

Upon roll call vote, all aye.

Councilman Hanson reported that the next Comprehensive Committee meeting will be Wednesday, August 15th at 7:00 p.m.

Upon motion duly made by Supervisor Robbins, seconded by Councilman Hanson the meeting adjourned at 7:59 p.m.

All aye.

Diane M. VanDewark, Town Clerk