

Minutes of the regular monthly meeting of the Jerusalem Town Board held on August 17, 2011 at 7:00 P.M. PRESENT were: Supervisor Jones, Councilors Parson, Simmons, Stewart, Town Attorney Bailey, Town Clerk McMichael, Town Engineer Ackart.

GUESTS: George Sproule, Dave Wegman, Mike Steppe, Taylor Fitch, Donna Alexander, Bob Evans and several other unidentified guests.

Excused: Councilor Folts

Supervisor Jones called the meeting to order with the Pledge to the Flag at 7:00 P.M.

RESOLUTION #130-11
APPROVAL OF MINUTES

On a motion of Councilor Simmons, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the minutes of the July 20, 2011 regular meeting be approved as read.

RESOLUTION #131-11
APPROVAL OF MINUTES

On a motion of Councilor Stewart, seconded by Councilor Parson, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the minutes of the July 14, 2011 special meeting be approved as read.

RESOLUTION #132-11
APPROVAL OF MINUTES

On a motion of Councilor Parson, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the minutes of the July 19, 2011 special meeting be approved as read.

RESOLUTION #133-11
AUDIT OF CLAIMS

On a motion of Councilor Parson, seconded by Councilor Simmons, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the bills be paid as presented in the following amounts:

General:	\$ 12,528.66	
General OV:	\$ 4,344.28	
Highway DA:	\$177,399.38	
Highway DB:	\$166,112.30	
Sewer:	\$ 74,649.29	
Water:	\$ 8,840.11	
Branchport Light:	\$ 232.27	
July utilities:	General:	\$ 755.78
	Sewer:	\$30,656.16
	Water:	\$ 105.99
	Outside Village:	\$ 33.95

RESOLUTION #134-11

SUPERVISOR REPORT

On a motion of Councilor Stewart, seconded by Councilor Parson, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the Supervisor's Report on the Town's finances for the month of July 2011 be accepted as presented.

RESOLUTION #135-11

APPOINTMENT - ACTING ASSESSOR

On a motion of Councilor Parson, seconded by Councilor Simmons, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Be It Resolved that the Jerusalem Town Board appoints Vernon Brand to assume the duties and responsibilities for the position of Acting Assessor for the Town of Jerusalem at a yearly salary of \$38,000 dollars to be paid bi-weekly beginning the week of August 22nd 2011.

The Town Board welcomed Mr. Brand. Mr. Brand will work Monday, Tuesday and Thursday, 8:30-4:30. His posted office hours are Monday 8:30-12:30 and Thursday 12:30-4:30 or by appointment.

HARBOR VIEW TOWNHOMES PROJECT - DISCUSSION:

Town Attorney Bailey outlined where the Town currently stands on the Harbor View Townhomes project with regard to their legal responsibilities and the procedures governed by sewage works corporation legislation. Special Counsel Attorney Hafner prepared the necessary resolutions for the Board's consideration as the project can not go forward without these approvals.

Significant changes have been made to both the storm water and sewage system designs, but all involved engineers have come to agreement on the items of contention. Town Engineer Ackart noted that all the changes are environmentally beneficial; however, all these changes have not been completed on paper yet.

The Planning Board rendered a Negative Declaration on the Harbor View SEQR on September 2, 2010. Because those plans have changed, the engineering plans as modified need to be reviewed by the Planning Board and an Amendment to the Negative Declaration be issued.

RESOLUTION #136-11
APPROVING FORMATION OF SEWAGE WORKS CORPORATION IN CONNECTION WITH
THE HARBOR VIEW TOWNHOMES

On a motion of Supervisor Jones, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

WHEREAS, Harbor View Townhomes, LLC (the "Applicant") has proposed construction of two 5-unit townhouse buildings and related facilities on premises located at the intersection of NYS Route 54A and Mill Street in the Town of Jerusalem (the "Project"); and

WHEREAS, the Town Planning Board has adopted a State Environmental Quality Review Act ("SEQRA") Negative Declaration for the Project and has granted conditional Site Plan Approval, but has not considered the revised plans; and

WHEREAS, in connection with the Project the Applicant has proposed construction of a sewage collection and disposal system to serve the Project, the Esperanza Rose tour boat, the Nangeo Marina and an existing duplex rental property (the "Sewer Works"); and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") has indicated that collection and treatment of sewage from more than one privately owned property will require the formation of a Sewage Works Corporation (SWC) pursuant to Article 10 of the New York State Transportation Corporations Law (the "TCL"); and

WHEREAS, Section 116 of the TCL provides that no Certificate of Incorporation of a sewage-works corporation may be filed unless a certificate executed on behalf of the local governing body of the municipality in which any part of a sewer system provided by such corporation is located consenting to the formation of the corporation is annexed thereto; and

WHEREAS, the Applicant has requested the Town Board to consent to the formation of a sewage-works (or "transportation") corporation to be known as the Harbor View Townhomes Sewage Works Corporation

(the "Corporation") which will own and maintain the entire sewer collection and treatment system as shown on plans submitted by the Applicant to the Town; and

WHEREAS, the Town Board may not consent to the establishment of the Corporation until the New York State Department of Health or the Yates County Department of Health approves of the maps and specifications of the proposed system, which approval authority was transferred and assigned to the Department of Environmental Conservation ("DEC") when it was established in 1970; and

WHEREAS, the maps and specifications of the sewer works to be owned and operated by the Corporation have been filed with DEC which has indicated that it is prepared to approve the plans upon formation of the Corporation, but the revised plans have not been considered by DEC; and

WHEREAS, Wayne P. Ackart, P.E., the Town's engineer, has examined the plans and specifications of the sewer works and provided a written report to the Town Board which determines that that they are feasible and adequate; and

WHEREAS, the Corporation has agreed to reimburse the Town for all costs of professional services rendered in connection with the sewer works pursuant to an Agreement by and among the Applicant, the Corporation and the Town (the "Reimbursement Agreement"), which costs are currently estimated to be \$28,230; and

WHEREAS, no consent by the Town shall be executed until such current balance is paid in full; and

WHEREAS, the Town Board has received a guaranty of payment of all costs of operation and maintenance of the sewer works from the Applicant and David J. Wegman and George Sproule, individually, pursuant to a Guaranty (the "Guaranty Agreement"), and this payment obligation will constitute sewer rents payable to the Town and secured by a lien on all the real property included in the Project; and

WHEREAS, the stock of the Corporation will be placed in escrow pursuant to an Escrow Agreement by and among the Applicant, the Town, Harbor View Homeowners' Association, Inc. (the "HOA") and Sheila McMichael as Town Clerk of the Town of Jerusalem (the "Escrow Agreement"), providing that title will pass to the Town in the event of certain occurrences described in the Escrow Agreement; and

WHEREAS, the Town Board believes that it has received all materials required prior to issuance of its consent; and

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board hereby approves the form and content of the Guaranty Agreement, the Escrow Agreement and the Reimbursement Agreement; and be it

FURTHER RESOLVED, that the Town Board hereby waives the requirement in TCL Section 119[1] for the posting of a performance bond based on the Applicant's covenant in the Reimbursement

Agreement not to place the Sewer Works in operation before completing construction and providing the Town Board with satisfactory proof of payment in full of all construction costs; and be it

FURTHER RESOLVED, that the Town Board hereby consents to formation of the Harbor View Townhomes Sewage Works Corporation in accordance with TCL Article 10 authorizes and directs Town Counsel and the Town Supervisor to take such other and further action as may be necessary to effectuate this consent, including execution and delivery of a certificate of consent to be annexed to the Corporation's Certificate of Incorporation; and be it

FURTHER RESOLVED, that the execution and delivery of this consent shall be contingent upon:

1. Payment in full of the costs for professional services through July 31, 2011 pursuant to the Reimbursement Agreement.
2. The Planning Board's review under SEQRA of the revised plans; and be it

FURTHER RESOLVED, that, upon satisfaction of the two conditions, the Town Board authorizes and directs the Town Clerk to forward a certified copy of this Resolution to the New York State Department of Environmental Conservation and to execute and deliver the Escrow Agreement in substantially the form approved by the Town Board with such changes as may be approved by the Town Supervisor and Town Counsel; and be it

FURTHER RESOLVED, that the Town Board authorizes and directs the Town Supervisor to execute and deliver the Reimbursement Agreement and the Escrow Agreement in substantially the form approved by the Town Board with such changes as may be approved by the Town Supervisor and Town Counsel; and be it

FURTHER RESOLVED, that the Town Board authorizes and directs the Town Supervisor, Town Clerk and Town Counsel to take such other and further action as may be necessary to effectuate the terms of this Resolution.

RESOLUTION #137-11
APPROVING STORMWATER CONTROL FACILITIES AGREEMENT IN CONNECTION
WITH THE HARBOR VIEW TOWNHOMES

On a motion of Councilor Simmons, seconded by Councilor Parson, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
 Nays 0

WHEREAS, Harbor View Townhomes, LLC (the "Applicant") has proposed construction of two 5-unit townhouse buildings and related facilities on premises located at the intersection of NYS Route 54A and Mill Street in the Town of Jerusalem (the "Project"); and

WHEREAS, as a prerequisite for development of the Project, the laws of the State of New York require the establishment and proper

maintenance and continuation of stormwater management facilities and practices; and

WHEREAS, the stormwater management facilities proposed in connection with the Project involve properties owned by the Applicant, Nangeo, LLC and Lake Keuka Boat Company, LLC (collectively, the "Owners"); and

WHEREAS, as one of the conditions of granting approval of the Project, the New York State Department of Environmental Conservation ("DEC") requires that the Owners provide for perpetual post-construction operation, maintenance, repair, continuation and, if necessary, replacement of all stormwater control measures for the Project, as set forth in the approved drawings, plans, specifications, Stormwater Pollution Prevention Plan and other materials submitted to the Town Board and the Planning Board (the "Plans"); and

WHEREAS, DEC also requires that the Owners enter into a Stormwater Control Facilities Agreement with the Town prior to DEC's approval of the proposed Stormwater Plans; and

WHEREAS, Wayne P. Ackart, P.E., the Town's Engineer, has examined the Plans and provided a report to the Town Board which determines that they are feasible and adequate; and

WHEREAS, the Town Planning Board has adopted a State Environmental Quality Review Act ("SEQRA") Negative Declaration for the Project and has granted conditional Site Plan Approval, but has not considered the revised plans; and

WHEREAS, a draft Stormwater Control Facilities Agreement and Easements to the Town of Jerusalem has been prepared by Town Counsel and will be finalized upon review of the substantially revised plans approved by the Town Planning Board;

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board hereby approves a Stormwater Control Facilities Agreement and Easements to the Town of Jerusalem, by and between the Owners and the Town (the "Stormwater Agreement"), in form acceptable to the Town Supervisor and Miller, Mannix, Schachner & Hafner, LLC as Special Town Counsel; and be it

FURTHER RESOLVED, that the Town Board authorizes and directs the Town Supervisor to execute and deliver such Stormwater Agreement with such further changes as may be approved by the Town Supervisor and Special Town Counsel; and be it

FURTHER RESOLVED, that after such Stormwater Agreement has been finalized the Town Supervisor and Town Counsel, the Town Board

authorizes and directs the Town Clerk to forward a certified copy of this Resolution and the executed Stormwater Agreement to the New York State Department of Environmental Conservation for their approval; and be it

FURTHER RESOLVED, that the Town Board authorizes and directs the Town Supervisor, Town Clerk and Town Counsel to take such other and further action as may be necessary to effectuate the terms of this Resolution.

REPORT OF TOWN OFFICIALS:

TOWN HIGHWAY:

- Written Budget Highway report on file in the Office of the Town Clerk.
- We anticipate receiving approximately \$200,000 in CHIPS funds in September.
- The new Mack truck has been delivered.

TOWN ENGINEER:

- The Water Department continues to gather data in preparation for the 2013 THM testing requirements.
- Two resolutions will be presented at the September Town Board meeting related to the Department of Transportation relocating a bridge that is adjacent to our 12" water main.

COUNCIL:

- The new KPSW pick-up truck has been delivered.
- The Town Board, by Resolution #122-11; approved to hire a Full Time Water and Sewer Maintainer to begin employment on January 1, 2012. The KPSW Committee is recommending to the Town Board that they advertise for a Provisional Full Time Water and Sewer Maintainer at an hourly rate of \$14.00/hour with Medical and Dental Benefits; and that the entire process be in accordance with the Employee Handbook adopted by the Town Board on May 16, 2007; Civil Service Law; and the Teamster Union Contract. Advertising in trade magazines was suggested. The ad has not been placed with the delay in hiring to January 2012.
- Councilor Simmons stated his concerns with the worker's compensation insurance cost allocations have been conveyed to County Legislators Fitch and Paddock, but with the 2% tax cap imposed by the State, Jerusalem will stay with the County's program.

SUPERVISOR:

- Retrofitting of the lights at the Town Hall and the Highway Barn is complete.
- Cynthia Geertson, 4352 Belknap Road, requested Supervisor Jones read the following letter of thanks:

Town of Jerusalem,

The cooperation of the Town of Jerusalem Recreation Program, the American Red Cross, and the Keuka Lake State Park has been greatly appreciated by us.

Many children enjoyed learning new swimming skills under the excellent direction of Emily Oswald and her assistants, Meghan Oswald and Katie Carpenter.

Additionally, this year's summer program benefited more young residents who, like my son, could only attend the swimming lessons.

Furthermore, this very hot and dry summer was an optimum time to introduce more young swimmers to the beauty of Keuka Lake, its parks, and its recreational benefits.

Thank you for providing this opportunity for my child.

RESOLUTION #138-11
AMEND RESOLUTION #112-11 TO ADD MEMBERS TO VILLAGE OF PENN YAN
MEETING

On a motion of Supervisor Jones, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
 Nays 0

Whereas the Jerusalem Town Board adopted the following resolution on July 7, 2011:

RESOLUTION #112-11
Financial Advisor Authorized Attendance at the meeting with the
Village of Penn Yan

On a motion of Councilor Stewart, seconded by Councilor Folts, the following was:

ADOPTED: Ayes 5 Folts, Jones, Parson, Simmons, Stewart
Nays 0

Resolved that our financial advisor, Charles Bastian of Bernard P. Donegan, Inc. be authorized to attend a meeting with the Village Clerk/Treasurer and the Director of Public Works to review the Sewer Plant Budget; and be it further

Resolved that KPSW Clerk Wheeler will contact the Village to schedule this meeting.

Councilor Folts stated his intention to attend such meeting in order to listen, not participate.
; and

Whereas the Town Board authorizes Carrie Wheeler, KPSW Clerk and Wayne Ackart, Town Engineer to attend the meetings with the Village of Penn Yan;

Therefore be it resolved that our financial advisor, Charles Bastian of Bernard P. Donegan, Inc., Carrie Wheeler, KPSW Clerk and Wayne Ackart, Town Engineer be authorized to attend a meeting with the Village Clerk/Treasurer and the Director of Public Works to review the Sewer Plant Budget; and be it further

Resolved that KPSW Clerk Wheeler will contact the Village to schedule this meeting.

Councilor Folts stated his intention to attend such meeting in order to listen, not participate.

COMMITTEE REPORTS:

ZONING REVIEW/54A SUBCOMMITTEE:

The Subcommittee reviewed the consultant's report following the public meeting held June 7. The Subcommittee will meet again September 8th and another community session is scheduled for September 22nd.

TOJ HYDROFRACKING IMPACT STUDY COMMITTEE:

Co-Chair, Joe Hoff stated the Committee continues to maintain a balanced approach in their research and discussion of regulating mining and industrialization in our Town. The Comprehensive Plan is also under review to ensure its effectiveness as it relates to hydrofracking.

Co-Chair Melanie Steinberg presented a report on the July 26th forum. The survey results are as follows:

QUESTIONNAIRE OF RESIDENTS - TABULATED RESULTS - 7/26/11

The Jerusalem Town Board has charged our committee of volunteer citizens with a study of natural gas drilling within the township. We have been taking an objective look at both the industry's position and the anti-drilling interests in the formulation of a set of recommendations to be presented to the Town Board based on this analysis.

This survey will assist with this task. The recommendations provided by our committee will become a part of the action plan to be decided at the local municipality level; *this process remains viable under New York State Law.*

#1.) The Town of Jerusalem Comprehensive Plan emphasizes agriculture, tourism and open spaces using the asset of clean water. Do you support this emphasis in the Comprehensive Plan?

YES **100%** NO **0%**

#2.) Do you believe that slick-water hydrofrack drilling is consistent with this plan?

YES **2.5%** NO **97.6%**

#3.) Do you think that hydrofrack drilling should be banned in the Town of Jerusalem?

YES **93%** NO **7%**

#4.) Do you think that flowback water from natural gas drilling outside the town should be accepted for disposal in the Town of Jerusalem?

YES **0.6%** NO **99.4%**

#5.) Do you think that the cuttings from mining (drilling) operations brought in from outside the town should be accepted for waste disposal in the Town of Jerusalem?

YES **1.7%** NO **98.3%**

#6.) In areas where hydrofrack drilling has occurred, massive truck traffic has altered the road use causing congestion and at times major damage to the roads. Should truck traffic involved in drilling operations be restricted from Town of Jerusalem roads?

YES **93.7%** NO **6.3%**

#7.) In light of the fact that the New York State DEC has recommended drilling to the governor (with permitting projected at 1/1/12) should a ban or series of bans be implemented as soon as possible in the Town of Jerusalem?

YES **94.8%** NO **5.2%**

The forum was well-attended and unfortunately a number of people were turned away. A letter inviting input from the community was on the front page of today's Chronicle Express. Letters are to be submitted to Supervisor Jones and the Committee members will return phone calls through September 1st.

RESOLUTION #139-11

YATES COUNTY MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN

On a motion of Supervisor Jones, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
 Nays 0

WHEREAS, Town of Jerusalem, with the assistance from Yates County, has gathered information and prepared the Yates County Multi-jurisdictional Hazard Mitigation Plan; and

WHEREAS, the Yates County Multi-jurisdictional Hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000; and

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

NOW THEREFORE, BE IT RESOLVED by Jerusalem Town Board that Town of Jerusalem adopts the Yates County Multi-jurisdictional Hazard Mitigation Plan as this jurisdiction's All Hazard Mitigation Plan, and resolves to execute the actions in the Plan.

RESOLUTION #140-11

FINGER LAKES CULTURAL & NATURAL HISTORY MUSEUM - MUNICIPAL
ENDORSEMENT

On a motion of Supervisor Jones, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

WHEREAS, the Finger Lakes Cultural and Natural History Museum, is applying to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) for a grant under the Environmental Protection Fund for a park project to be located at the Branchport School Facility located at 3456 Route 54, Bluff Point, New York 14478, a site located within the territorial jurisdiction of this Board; and

WHEREAS, as a requirement under the rules of these programs, said not-for-profit corporation must obtain the "approval/endorsement of the governing body of the municipality in which the project will be located";

NOW, THEREFORE, be it resolved by this august body that the Town Board of Jerusalem hereby does approve and endorse the application of the Finger Lakes Cultural and Natural History Museum for a grant under the Environmental Protection Fund for a park project known as Finger Lakes Museum Branchport Campus: Phase I Building & Park Improvements, located within this community.

RESOLUTION #141-11

SURPLUS EQUIPMENT - VOTING MACHINES

On a motion of Councilor Stewart, seconded by Supervisor Jones, the following was

August 17, 2011
Jerusalem Town Board

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that the four voting machines currently located at the Yates County office building and the Yates County Highway Barn be declared as surplus equipment to be scrapped at B&B Recycling.

REMOTE COMPUTER ACCESS:

This matter is tabled until receipt of the confidentiality policy from our IT personnel.

RESOLUTION #142-11

SCHEDULE PUBLIC HEARING & GML REFERRAL - PROPOSED LOCAL LAW F-2011
WIND FARM REGULATIONS

On a motion of Supervisor Jones, seconded by Councilor Stewart, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
Nays 0

Resolved that a Public Hearing be held at the September 21, 2011 Town Board meeting at 7:00 P.M. on proposed Local Law F-2011 adding a new article "Wind Farms" to the zoning code; and, be it further

Resolved that a GML 239 Referral be submitted to the Yates County Planning Board for review on said local law upon completion of SEQOR; and, be it further

Resolved that the Town Clerk advertise for said Public Hearing in a manner consistent with law.

UNSAFE STRUCTURE - 2958 ROUTE 54A:

The Code Enforcement Officer issued a letter on August 12th to the property owner of 2958 Route 54A outlining the procedure the Town will follow if the demolition of the unsafe structure is not completed.

PLANNING BOARD - REQUEST FOR ENGINEER SERVICES

This item will be placed on the September agenda.

PUBLIC COMMENTS:

County Legislator Fitch has joined local leaders who will be developing an application to vie for \$1 billion in grants, tax breaks and other funds. The application deadline is November.

Badger Technologies will be moving their operations out of Jerusalem.

RESOLUTION #143-11

MOVE TO EXECUTIVE SESSION

On a motion of Supervisor Jones, seconded by Councilperson Stewart, the following was

ADOPTED Ayes 4 Parson, Jones, Simmons, Stewart
 Nays 0

Resolved that this meeting be interrupted to enter into Executive Session to discuss pending litigation.

The Executive Session convened at 9:01 P.M.

RESOLUTION #144-11

RETURN TO REGULAR SESSION

On a motion of Councilperson Stewart, seconded by Supervisor Jones, the following was

ADOPTED Ayes 4 Parson, Jones, Simmons, Stewart
 Nays 0

Resolved that the Board return to regular session.

The Board reconvened in regular session at 9:12 P.M.

RESOLUTION #145-11

AUTHORIZE APPRAISALS - STRONG HALL & East BLUFF APARTMENTS

On a motion of Supervisor Jones, seconded by Councilor Simmons, the following was

ADOPTED Ayes 4 Jones, Parson, Simmons, Stewart
 Nays 0

Resolved that Jay Loson of Midland Appraisal Associates, Inc. provide a review of Pogel Appraisals for Strong Hall Apartments and East Bluff Apartments: James C. Gocker as Trustee of the Max M. Farash Declaration, et al v. Town of Jerusalem Index 2010-338 and Farash Property Holdings I, LLC v. Town of Jerusalem Index 2010-339. This review was recommended by Pat Brede, Yates County Real Property Tax Service Director. The Penn Yan School District has agreed to share the cost of the review. The Yates County Legislature will consider sharing the cost with a letter of request from the Town of Jerusalem.

With there being no further business, the meeting was adjourned at 9:13 P.M.

Sheila McMichael, Town Clerk