

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

PRESENT: Supervisor Edward Fairbrother
Council Bob Adams
Lee Giammichele
Andy Gillette
Attorney Thomas Reilly
Clerk Linda Cross

ABSENT: Council Mike Saglibene

Supervisor Fairbrother called the Town Board Meeting to order at 7:00 p.m. and requested those present to participate in the Pledge of Allegiance.

PRESENTATION: Empire Access - Brian Ketchum Vice President

CONCERNS OF THE PEOPLE – None

Councilperson Giammichele read a letter from Scott Packard, Head Coach for the Southern Tier Smoke Softball, and spoke about the bad conditions of the Softball Fields.

MINUTES

Councilperson Giammichele made a motion, seconded by Councilperson Gillette to approve the minutes of July 23, 2014 as presented. All in favor except Councilperson Saglibene who was absent, motion carried.

UNFINISHED BUSINESS

RESOLUTION NO. 204-14
LOCAL LAW #1 OF 2014, TO AMEND
CHAPTER 2.16 OF THE TOWN MUNICIPAL CODE APPROVED

Resolution by: Gillette
Seconded by: Adams

WHEREAS the Town of Big Flats held a public hearing on July 9th, 2014 for the change in Chapter 12.16 of the Town of Big Flats municipal code when it should have been for a change in Chapter 2.16, and

WHEREAS at the public hearing on July 9th, 2014 no comments for or against nor in general as the change in chapter 2.16 of the municipal code, and

WHEREAS this provides legal defense and indemnification in civil actions against any employee, and

WHEREAS for environmental review purposes, interpreting an existing code, and adoption of regulations, policies, or procedures and local legislative decisions are Type II

RESOLUTION NO. 204-14, LOCAL LAW #1 OF 2014, TO AMEND CHAPTER 2.16 OF THE TOWN MUNICIPAL CODE APPROVED continued

action in accordance with SEQRA 6 NYCRR, Part 617.5 (c) (31, 27) and as such no further action is necessary regarding the same, now

BE IT THEREFORE be enacted by the Town Board of Big Flats as follows: That the presently existing Chapter 2.16 of the Town of Big Flats Municipal code shall be repealed and replaced by the following:

Chapter 2.16. DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

2.16.010 Title.

This chapter shall be known as "Legal Defense of Town Officers and Employees."

2.16.020. Definition of Employee.

As used in this chapter, unless the context otherwise requires the term Employee shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of a public entity, whether or not compensated, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

2.16.030. Employees to be defended; scope of defense.

A. Upon compliance by the employee with the provisions of 12.16.040 of this chapter, the town shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting or in good faith purporting to act within the scope of his public employment or duties. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the Town.

B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Town Attorney or an attorney chosen by the employee from among not less than three attorneys selected by the Town Attorney and Town Supervisor and approved by the Town Board on the basis of their qualification and experience to defend the litigation, to be employed or retained by the town for the defense of the employee. The employee shall be entitled to be represented by private counsel of his/her choice whenever the Town Attorney determines, based upon investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 204-14, LOCAL LAW #1 OF 2014, TO AMEND CHAPTER 2.16 OF THE TOWN MUNICIPAL CODE APPROVED continued

inappropriate, or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town Attorney. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such attorney(s) employed or retained, from time to time, during the pendency of the civil action or proceeding subject to certification by the Town Supervisor that the employee is an employee, as defined in this chapter, and otherwise is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the town.

C. Where the employee delivers copies of all paperwork served on him and a request for a defense to the Town Attorney as required by 12.16.040 of this chapter, the Town Attorney may take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section, on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligation of the town to provide a defense.

2.16.040. Indemnification of officers and employees.

A. The town shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting or purporting to act within the scope of his public duties or employment; provided, further, that in the case of a settlement, this duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Town Board.

B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employees. Additionally, if it is determined by the court or the jury that the employee or any employees that their actions were due to intentional wrongdoing or reckless acts any legal fees paid to the attorney(s) represented the employee(s) shall be reimbursed to the town by the employee(s).

C. Nothing in this section shall authorize the town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to General Municipal Law, § 51; provided, however, that the town shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee acting or purporting to act within the scope of his public employment or duties has, without willfulness or intent on his part, violated a prior order,

RESOLUTION NO. 204-14, LOCAL LAW #1 OF 2014, TO AMEND CHAPTER 2.16 OF THE TOWN MUNICIPAL CODE APPROVED continued

judgment, consent decree or stipulation of settlement entered in any court of this state or the United States.

D. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement upon the Supervisor, personally or by certified mail within 30 days of the date of entry or settlement, and, if not inconsistent with the provisions of this chapter, the amount of such judgment or settlement shall be paid by the Town in the same manner as other town charges.

2.16.050. Notice to town and employee cooperation required.

The duties to defend or indemnify and save harmless provided in this chapter shall be contingent upon delivery to the Town Attorney or Town Supervisor of a written request to provide for his/her defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after the employee is served with such document(s) and the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the town provide for his defense and indemnification pursuant to this chapter, unless the employee shall state in writing that a defense and any indemnification is not requested.

2.16.060. Construction of provisions; applicability.

A. The benefits of this chapter will inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provisions of the Workers' Compensation Law.

B. The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

C. As otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town or any right to defense by, in accordance with or by reason of any other provision of state or federal statutory or common law.

D. The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought before, on or after the effective date of this chapter.

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 204-14, LOCAL LAW #1 OF 2014, TO AMEND CHAPTER 2.16 OF THE TOWN MUNICIPAL CODE APPROVED continued

E. The town may either purchase insurance from any insurance company created by or under the laws of this state or authorized by law to transact business in this state, against any liability imposed by the provisions of this chapter or as alleged in any court action referred to herein, or to act as a self-insurer with respect thereto.

F. All payments made under the terms of this chapter, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

G. Except as otherwise provided in this chapter, benefits accorded to employees under this chapter shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment, unless the Town Board shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.

H. This chapter shall not in any way affect the obligation of any claimant to give notice to the town under section ten of the court of claims act, section 50-e or any other provision of law.

I. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

2.16.070. When effective.

This chapter shall take effect immediately upon filing in the office of the Secretary of State.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

NEW BUSINESS

RESOLUTION NO. 205-14
ABSTRACT OF AUDITED VOUCHERS APPROVED

Resolution by: Adams
Seconded by: Giammichele

RESOLVE that the Town of Big Flats approve the Abstract of Audited Vouchers for August 2014, vouchers 4003571 - 4003700 and order the bills paid, when in funds, for the following:

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 205-14, ABSTRACT OF AUDITED VOUCHERS APPROVED

GENERAL FUND	\$100,955.41
HIGHWAY FUND	\$ 86,908.39
SEWER DISTRICT	\$ 625.48
WATER DISTRICT #1	\$ 7,963.38
WATER DISTRICT #2	\$ 7,549.94
WATER DISTRICT #3	\$ 42,860.82
WATER DISTRICT #4	\$ 807.25
LIGHTING DISTRICT	\$ 1,050.43
TRUST & AGENCY	\$ 1,821.75

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 206-14
RESIGNATION OF THE PART-TIME DEPUTY COURT CLERK TO THE JUSTICE
APPROVED

Resolution by: Giammichele
Seconded by: Gillette

WHEREAS a notice was received from Deputy Court Clerk Terri O'Rourke, dated August 26, 2014, informing the Justice that she no longer works for the Town, and

WHEREAS for environmental purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5 (c) (20) and as such, no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board accepts the resignation of Terri O'Rourke part-time Deputy Court Clerk, effective August 18, 2014 and request the Town Supervisor send a letter of appreciation to Ms. O'Rourke for her time and dedication.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 207-14
SPECIAL MEETING. TO INTERVIEW INSURANCE COMPANIES ON
SEPTEMBER 4, 2014 AT 3:00 P.M.

Resolution by: Adams
Seconded by: Gillette

WHEREAS the Town of Big Flats is holding a special Town Board meeting to select an insurance broker for casualty and health insurance, and

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 207-14, SPECIAL MEETING. TO INTERVIEW INSURANCE COMPANIES ON SEPTEMBER 4, 2014 AT 3:00 P.M.

WHEREAS the Town will listen to presentations from several insurance brokers, and

WHEREAS this will be an open meeting for these presentations, and

WHEREAS for environmental purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5 (c) (20) and as such, no further action is necessary regarding the same, now

THEREFORE BE IT RESOLVED the Town Board will hold a special Town Board meeting on September 4th at 3PM to hear presentations from four selected Insurance Companies, to decide which Broker for the Town's insurance for the year 2015.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 208-14
PURCHASE OF A PHONE SURGE PROTECTION SYSTEM FROM TECHLINE COMMUNICATIONS APPROVED

Resolution by: Gillette
Seconded by: Adams

WHEREAS the Town has installed a new phone system and a surge protection system needs to be installed to protect it, and

WHEREAS the Town has received damage from a major electrical surge in 2013, and

WHEREAS the new phone system was installed by Techline Communications and will be maintained by Techline Communications, and

WHEREAS the price of the surge system is within the guide lines and has been reviewed, and

WHEREAS for environmental purposes the administration of the Town personnel is a Type II action in accordance with SEQRA 6, NYCCR Part 617.5(c) (25) and as such no further action is required regarding the same, and

THEREFORE BE IT RESOLVED that the Town Supervisor recommends that Techline Communications be awarded the contract to install a new phone surge suppression system not to exceed \$1,600.00 (One Thousand Six hundred dollars).

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 209-14

ENTERED INTO AN AGREEMENT WITH BRYSON CLARK, TO SATISFY A JUDGEMENT AGAINST EMPIRE STORAGE, LLC, KIMBERLEE S. KLEE, and CHRISTOPHER KLEE ON TAX PARCEL 77.00-1-33.1 APPROVED

Resolution by: Giammichele
Seconded by: Adams

WHEREAS the Town of Big Flats has a judgment against Empire Storage, LLC, Kimberlee S. Klee, and Christopher Klee on tax parcel 77.00-1-33.1 for the sum of \$88,045.61 plus interest, and

WHEREAS Joel Klee is the record title holder of tax parcel 77.00-1-33.1 in the Town of Big Flats, County of Chemung being 104.039 acres, and

WHEREAS Bryson Clark is purchasing the tax parcel 77.00-1-33.1 from Joel Klee for the back taxes currently due on the property and to satisfy in the amount of \$90,000 to the town of Big Flats against the judgment, and

WHEREAS Bryon Clark shall pay to the Town of Big Flats a down payment of \$20,000,(Twenty Thousand dollars) and shall execute a Note and Mortgage to the Town of Big Flats in the amount of \$70,000, (Seventy Thousand dollars) to be paid back without interest in monthly payments of \$1,000 (One Thousand dollars) each, and

WHEREAS for environmental purposes the administration of the Town personnel is a Type II action in accordance with SEQRA 6, NYCCR Part 617.5(c) (20) and as such no further action is required regarding the same, and

THEREFORE IT BE RESOLVED the Town Board authorizes the Town Supervisor to enter into an agreement with Bryson Clark on tax parcel 77.00-1-33.1 with the approval of the Town Attorney

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 210-14

APPROVING AND ACCEPTING THE AUGUST 27, 2014 COMMUNICATION LOG APPROVED

Resolution by: Adams
Seconded by: Gillette

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 210-14, APPROVING AND ACCEPTING THE AUGUST 27, 2014 COMMUNICATION LOG APPROVED

BE IT RESOLVED that the following communications were received, accepted and filed by the Town Clerk of the Town of Big Flats and referred to the appropriate Department Head for information and/or action:

August 4, 2014

New York State Dept. of Taxation & Finance- RE: Certificate of the Final State Equalization Rate Referred to: *Town Board, Assessor, Tax Collector, and Town Clerk for filing*

August 5, 2014

Moody's Investors Service – RE: Assigned a rating of Aa3 to Town of Big Flats, NY, Public Improvement Refunding Serial Bonds, 2014. *Referred to: Town Board, Bookkeeper, and filed with Town Clerk.*

August 14, 2014

Time Warner Cable – RE: Time Warner Cable Announces Eyes and Ears Amber Alert Initiative. *Referred to: Town Board and Town Clerk for filing.*

August 20, 2014

Time Warner Cable – RE: August 20, 2014 Programming Notice Changes *Referred to: Town Board, and filed with Town Clerk.*

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 211-14
COMMUNITY CENTER LIMITATION ON USE AND GENERAL RULES POLICY
AS PRESENTED BY THE COMMUNITY CENTER COMMITTEE ADOPTED

Resolution by: Adams
Seconded by: Giammichele

WHEREAS the Community Center Committee and the Town Board liaisons have reviewed the current Community Center limitation on use and general rules policy, and

WHEREAS the Town Attorney and the Town Board have reviewed and commented on the limitation on use and general rules policy, and

WHEREAS the Town Board liaisons have recommended that the Town Board adopt the new limitation on use and general rules policy, and

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 211-14, COMMUNITY CENTER LIMITATION ON USE AND GENERAL RULES POLICY AS PRESENTED BY THE COMMUNITY CENTER COMMITTEE ADOPTED continued

WHEREAS for environmental purposes the administration of the Town personnel is a Type II action in accordance with SEQRA 6, NYCCR Part 617.5(c) (20) and as such no further action is required regarding the same, and

THEREFORE BE IT RESOLVE that the Town Board adopts the new Town of Big Flats Community Center Use Policy as presented by the Community Center Committee and liaisons to the Community Center Committee. This new Community Center Use Policy will be presented to the Director of the Community Center by the Town Board liaisons to the Community Center.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

Supervisor Fairbrother temporally closed the Town board meeting at 8:26 p.m. and opened the Water Board Meeting at 8:27 p.m.

PUBLIC HEARING: 7:01 p.m. Utilizing Capital Improvement Funds/ WD #1, #2, #3

Supervisor Fairbrother called the public hearing to order and read the legal notice duly advertised in the Elmira Star Gazette on August 21, 2014, which allowed and considered public comments concerning utilizing the Capital Improvements Reserve Funds from Water District #1, #2 & #3, to fund the cost of improvements and equipment purchases.

IN FAVOR: None

OPPOSITION: None

COMMENTS: None

Since there were no further comments, Supervisor Fairbrother closed the Public Hearing at 8:29 p.m.

UNFINISHED BUSINESS

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 212-14
BUDGET AMENDMENT AND TRANSFERS FROM THE CAPITAL
IMPROVEMENT RESERVE FUNDS AND FUND BALANCE FOR WD #1, WD #2,
WD #3 & WD #4 APPROVED

Resolution by: Gillette
Seconded by: Giammichele

WHEREAS a memorandum was received from the Bookkeeper, dated July 29, 2014, requesting authorization for the following transfers from the Capital Improvement Reserve Funds and Fund Balance to facilitate the general Capital Improvements, infrastructure and installations to the water delivery and supply system, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5 (c) (20) and as such further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Bookkeeper to fulfill the following budget transfers and amendments for the following water districts:
(Please see attached for listed items)

Water #1

Increase:

Engineering Fees CE-S1.1440.0400	5,040.00	
Data Processing CO- S1.1680.0200	8,376.30	
Administration CO-S1.8310.0200	17,690.27	
Source of Supply Power & Pump CO-S1.8320.0200	122,611.00	
Appropriations S1.0960		153,717.57
To Appropriated Reserves, CIR S1.0511	134,002.00	
To Appropriated Fund Balance -S1.0599	19,715.57	

Water #2

Increase:

Engineering Fees CE-S2.1440.0400	5,040.00	
Data Processing CO- S2.1680.0200	8,376.30	
Administration CO-S2.8310.0200	17,690.27	
Source of Supply Power & Pump CO-S2.8320.0200	23,709.00	
Appropriations S2.0960		54,815.57
To Appropriated Reserves, CIR S2.0511	15,000.00	
To Appropriated Fund Balance -S2.0599	39,815.57	

Water #3

Increase:

Engineering Fees CE-S3.1440.0400	1,920.00	
Data Processing CO- S3.1680.0200	3,064.50	
Administration CO-S3.8310.0200	6,472.05	
Source of Supply Power & Pump CO-S3.8320.0200	9,032.00	

MINUTES OF THE TOWN/ WATER BOARD MEETING OF AUGUST 27, 2014

RESOLUTION NO. 212-14, BUDGET AMENDMENT AND TRANSFERS FROM THE CAPITAL IMPROVEMENT RESERVE FUNDS AND FUND BALANCE FOR WD #1, WD #2, WD #3 & WD #4 APPROVED, continued

Appropriations S3.0960		20,488.55
To Appropriated Reserves, CIR S3.0511	4,000.00	
To Appropriated Fund Balance -S3.0599	16,488.55	
<u>Water #4</u>		
Increase:		
Data Processing CO- S4.1680.0200	612.90	
Administration CO-S4.8310.0200	1,294.41	
Appropriations S4.0960		1,907.31
To Appropriated Fund Balance -S4.0599	1,907.31	

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother
NAYS: None ABSENT: Saglibene

Since there was no further business to come before the Water Board, Supervisor Fairbrother closed the Water Board meeting at 8:30 P.M.

Supervisor Fairbrother reopened the Town Board Meeting at 8:31 p.m.

Supervisor Fairbrother reported:

- Fiberizing the town with Empire
- September 3rd, Town and Country Fire Department
- September 4th Special Meeting @ 3:00 p.m. for interviewing insurance Brokers
- Water Main leak on Chambers Road
- New Trucks
- Community Center Committee
- Parks Committee
- Aging Friendly Committee
- Community Center Carpets – needs replacing
- Credit Cards – hoping to have up and running by October/November
- Employee Manual
- Sales Tax
- Aging housing for our area
- 3rd time Parking collection at the community park during Tags concerts – working very well

Supervisor Fairbrother, seconded by Councilperson Giammichele to enter into an executive session concerning an employee and asked Andy Avery's Commissioner of Public Works to enter in, at 9:00 p.m.

Supervisor Fairbrother reconvened the Town Board Meeting at 9:54

Councilperson Gillette made a motion, seconded by Councilperson Adams to adjourn the Town Board meeting at 9:55 p.m. All in favor, motion carried.

Date approved: _____ Linda Cross
Town Clerk