

Regular Town Board Meeting

11/14/19

Members Present: Supervisor Nayer, Councilperson Miller-Simmons, Councilperson Mettler, Councilperson Gansowski and Councilperson Wolf.

A motion was made by Councilperson Mettler and seconded by Councilperson Gansowski to waive the reading of the minutes of October 10, 2019 Regular Board Meeting and accept the minutes as written. Motion was carried.

Announcements: Check the Town Website and the Copake Connection.

Correspondence:

From Christine, CLC – a letter requesting a letter of support from the Town of Copake for Grant entitled “Headwaters Taghkanic Creek”.

From Lee Heim, C.E.O. – advising that the Town of Canaan received a NYSERDA clean energy communities grant for \$35,000.00 and they have choose to use it for a 2019 Misubishi Outlander AWD PHEV hybrid gas/electric vehicle to be used as the shared service vehicle for the four Towns. This will save each Town \$1,176.00 per year.

From Keith Thomas, President R.J. Young at Hearters – Thanking the Town for their \$500.00 donation.

From Grant Langdon – an updated bill for the Town of Copake.

From Brad Sherwood, Project Manager, Department of the Army – A copy of a letter to Steve Zias advising that his proposed work near Robinson Pond will fall under the jurisdiction of the Department of the Army.

Supervisor Nayer thanked all of this year’s candidate’s efforts to pick up their campaign signs so quickly.

Department/Committee Reports: None

Public Forum: Grant Langdon advised that he met with D.A. Czajka today and asked him to do something to clear his son’s name. Also requested that the Town Board approve paying his bill he has submitted to the Town for travel expense. Supervisor Nayer stated he is not paying the bill.

New Business:

Supervisor Nayer explained how the Town of Copake’s C.E.O. Shared Service Agreement expenses will be reduced do to a \$35,000.00 Grant the Town of Canaan received that will be used to purchase a new 2019 Misubishi Outlander AWD PHEV hybrid gas/electric vehicle which will be used by all four Towns.

Supervisor Nayer stated that Assessor Lynn Hotaling is requesting a laptop computer to be used by the three other Towns that she works for under the shared service agreement, the cost would be \$230.00 per Town.

A motion was made by Councilperson Wolf and was seconded by Councilperson Gansowski to approve the purchase of the Assessor's laptop. Motion was carried.

A motion was made by Councilperson Miller-Simmons and was seconded by Councilperson Mettler that per the request of Highway Superintendent Gregory, to declare the 2000 Cat Wheeled Excavator as surplus equipment and authorize the excavator to be advertised for sale on the Auction International Website. Motion was carried.

Supervisor Nayer reported that myself and Russ Davis have been working on the Town Memorial Clock for months and it still isn't working. Russ contacted Susan from Electric Timeclock and they feel that the problem is with the motors. They quoted the repairs to be \$4,400.00 to replace the motors, but there could be other problems that could run the bill up to 7 or 8 thousand dollars. Supervisor Nayer said he would find the money in the budget for the repairs.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Mettler to authorize Supervisor Nayer to enter into an agreement with Electric Timeclock, Inc. to make the repairs to the Copake Memorial Clock. Motion was carried.

Supervisor Nayer reported the Park Generator repairs will be made soon at a cost of around \$800.00. Supervisor Nayer has requested Rob Lopez to look into possible Grants to replace this generator in the future. Councilperson Gansowski questioned if we could get money from FEMA to replace the Generator seeing that the building is a shelter. Supervisor Nayer advised that there is no money from Red Cross for generator replacement.

Supervisor Nayer updated the Board on the damages to the Church Museum from the tree falling on it during a storm. Damage was done to the roof, chimney and broke a gas line. The tree has been taken down and the gas line is repaired. We are still waiting for proposals for the chimney and roof repairs.

A motion was made by Councilperson Gansowski and seconded by Councilperson Mettler to authorize Supervisor Nayer to send a letter of support for the Grant entitled "Headwaters Taghkanic Creek" for the Columbia Land Conservancy. Motion was carried.

Supervisor Nayer reported that we have gotten quite a few responses for open positions and the applications have been given to all the Departments and they were all told to schedule there interviews and invite the Town Board per the Policy Manual and have everything in by the December Meeting.

Councilperson Mettler brought up the training of a new bookkeeper. Supervisor Nayer responded that there would be no training until January. This is a Supervisor's Appointment and we are in the worst time right now to train someone and we are not going to do it. The Town's Bookkeeper is not around as she is traveling. We have so much work to get done between now and the end of the year so there is no time. Councilperson Mettler said she had talked to the Bookkeeper and she said she was done January

1<sup>st</sup>. Supervisor Nayer said that it is true that she is done January 1. Councilperson Mettler stated that we all agreed that the new Bookkeeper was going to be trained regardless of who became Supervisor. Supervisor Nayer stated that was not true. Councilperson Mettler proposed the following motion: I move that the Board approve the expense of up to \$1500 to be applied to the training of the incoming bookkeeper, with the proviso that when the supervisor race is decided- either by concession or by the certification of the results by the Board of Elections, the Supervisor Elect will notify the Clerk of her intended bookkeeper, and the training shall commence. Supervisor Nayer stated that this not about the approving of money, this is the Supervisor's decision. In August Supervisor Nayer made suggestion to both candidates and it was refused and now we are at the end of the year and there a lot of things that need to be done to close out the year and he is not going to pay some to sit there to be trained. Councilperson Miller-Simmons stated that when Councilperson Mettler and her met she told Councilperson Mettler that she did not have anyone in mind for the Bookkeeper Position and if she knew someone who would be good in Municipal Bookkeeping that she would be open to suggestions. Councilperson Miller-Simmons added that if Councilperson Mettler had proposed a good candidate that she would work with them. Councilperson Miller-Simmons did not want it to come down to this, she only wanted what was best for the Town. Councilperson Wolf added that where we are now is in the worst possible place, we are getting to the end of Supervisor Nayer's term and one of you are going to be Supervisor. I am not saying it is anybody's fault that we are in this position, what I am saying is that the Supervisor, Town Board and the Town need to have a Bookkeeper that he or she is doing when the transition occurs. The fact that the election was so close makes this that more difficult that their wasn't a prior agreement because now we are getting closer and closer to the end of the year and we are nowhere. I don't understand what the problem is when a decision is made on the election and a Bookkeeper is chosen why can't that person be trained to the extent of what the outgoing Bookkeeper is available somewhat and that is what we need to do. I don't see why anyone would object this proposal as it is in the best interest of the Town. Supervisor Nayer stated he is not doing it, you can put it on him, I tried to do something, I made an offer, I was resisted and I am at the end of my term, this was something that was brought up early and it was put off to the end and it gets worse and worse. This is not something a Bookkeeper is going to learn in a couple of trainings, I tried to explain this to you guys, it didn't go and you didn't want to do it. Supervisor Nayer restated that this is his appointment, by law that is the end of it. Councilperson Mettler stated that it is unfortunate over the last eight years this Board has gotten along and respect each other and listened to each other's ideas to wind up with this kind of discussion and I don't want to be part of it. Councilperson Mettler stated that she had a motion on the table, Supervisor Nayer it does not matter if there is a motion or a second it is not your choice it is his choice. Councilperson Wolf restated that we are in a bind, we need to get a trained Bookkeeper. Councilperson Miller-Simmons stated we are only in a bind if Councilperson Mettler is the next Supervisor. Councilperson Miller-Simmons stated that she is prepared, I won't need that \$1,500.00, I have found a Municipal Bookkeeper who I would be very comfortable with. Councilperson Mettler added that even if a person is a trained Municipal Bookkeeping it would be a benefit for that person to sit down with Teri Traver to know what the practices are for Copake. Councilperson Miller-Simmons stated she already knows what they are because she has sat with Teri and done it. I have learned a lot from Teri about Municipal Bookkeeping, I made sure I knew what I was getting into. So I don't feel I would need the \$1,500.00 so I can't support it. Councilperson Wolf replied that it is great if

Councilperson Miller-Simmons is prepared and does not need the money for training, but the election has not been decided yet and I would like to proceed with Councilperson Mettler’s motion and see where it goes.

Councilperson Mettler made a motion seconded by Councilperson Wolf that the Board approve the expense of up to \$1500 to be applied to the training of the incoming bookkeeper, with the proviso that when the supervisor race is decided- either by concession or by the certification of the results by the Board of Elections, the Supervisor Elect will notify the Clerk of her intended bookkeeper, and the training shall commence.

Discussion: Supervisor Nayer stated whether you put the money in for the training or not I am the only one who has the authority to appoint the trainee as a Bookkeeper and I am not doing it. So you can do whatever you want the money becomes irrelevant.

Town Attorney Dow added that the Board can authorize the expenditure but the Supervisor does designate the person. Councilperson Mettler understands that if the motion was approved and the Supervisor did not appoint a trainee then the money could not be spent. Councilperson Mettler still requested a vote on the motion.

Supervisor Nayer requested a roll call vote for this motion. Supervisor Nayer	no
Councilperson Miller-Simmons	no
Councilperson Mettler	yes
Councilperson Gansowski	no
Councilperson Wolf	yes

Motion was defeated.

**Budget:**

Supervisor Nayer announced that the third quarter tax check was \$210,080.98 up 5.2% from last year third quarter.

Supervisor Nayer advised the Board that funding for the new excavator could come from Highway Fund Balance, Equipment Fund or transfer from the General Fund Balance. The total would be \$168,484.00. The Board can decide next year if they want to wait. Councilperson Gansowski suggested doing it now.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Miller-Simmons to authorize the \$168,484.00 for the purchase of the new Excavator being delivered in 2020 be transferred from the General Fund Balance to the Highway Equipment Fund. Motion was carried.

Appointments: None

**Councilperson Reports:**

Councilperson Wolf reported Once again, the Planning Board agenda items that took up the bulk of the meeting time concerned the proposed construction by GRJH of a gas station/convenience store at the

northwest corner of Route 23 and Craryville Road. First, there was lengthy presentation by GRJH's expert who sought to refute what she characterized as false claims by SAVE CRARYVILLE that GRJH had misrepresented facts regarding the aquifer beneath the site. She also reported that there was evidence of a "legacy" kerosene spill from when the site housed a service station. She noted that there had been another "legacy" spill down the road at the site of the Ameristop, and that no nearby wells were affected. At its site, GRJH will do drilling probes to learn if anything is left from the kerosene spill, and will test nearby wells. Then, during a continuation of the public hearing on the matter, an attorney for SAVE CRARYVILLE asked to review the soil testing results that GRJH obtains. The attorney said that NY State Law requires that a site plan review must assess the impact of the project on community safety, not merely whether GRJH's spill containment plan is adequate. Concerning a second matter, site plan reviews of Salvatore Cascino's 13 Lackawanna Properties, Chair Bob Haight reported that the Planning Board is seeking to arrange for a meeting with the State Department of Agriculture and Markets to learn how it reached its determination that the site is a farm operation.

Councilperson Mettler reported that Roberta Roll could not be here tonight but asked me to report that the PAC (Project Advisory Committee) met with Margaret Irwin and Ian on Monday November 11. They toured the area, visiting various waterways and envisioning what projects they might propose. The RAC (Road Advisory Committee) is not meeting until January since they are waiting for the County to hire a consultant. On October 25 I attended a "Rural Housing Workshop" which was sponsored by Assemblywoman Didi Barrett. Four towns were invited and I was included on behalf of Copake. There were also developers and builders in attendance and it was a very interesting meeting on a the important topic of housing.

Councilperson Miller-Simmons reported that the Copake Parks & Recreation Commission has requested to spend up to \$500.00 on the Holiday Light Parade. Supervisor Nayer added that they spent \$200.00 last year because they had so much stuff left over from the previous year.

A motion was made by Councilperson Wolf and was seconded by Councilperson Mettler to authorize the Copake Parks & Recreation Commission to spend up to \$500.00 on the Holiday Light Parade Event. Motion was carried.

Councilperson Gansowski reported Trout Unlimited is still working on securing funds for the Yonderview Road Project. Also Town Attorney Dow, Planning Board Chairman Bob Haight and Councilperson Gansowski went out to DiDi Barrett's Office to discuss them changing their mind on the letter they sent Mr. Casino regarding his Farm. Z.B.A. had a somewhat normal meeting.

Public Forum: Councilperson Gansowski announced that Lorinda Ackley, former President of Taconic Telephone Company and a longtime resident of the Town of Copake recently passed away after a long battle with cancer.

A motion was made by Councilperson Miller-Simmons and was seconded by Councilperson Gansowski to go into Executive Session to discuss litigation. Motion was carried.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Wolf to return to the regular meeting. Motion was carried.

A motion was made by Supervisor Nayer and was seconded by Councilperson Gansowski to authorize Supervisor Nayer to sign the following: Settlement Agreement and Release

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made and entered into as of the        day of October, 2019 by and between JOHN D'APRILE ("Plaintiff") and the TOWN OF COPAKE ("Defendant"). This Settlement Agreement is entered into for the purpose of settling any and all claims, controversies and disputes, made or not made, between the aforesaid parties arising out of, or in any way related to the allegations in the lawsuit JOHN D'APRILE, Plaintiff – against – TOWN OF COPAKE, Defendant, Index Number 9636-2015, in the Supreme Court of the State of New York, Columbia County, (the "Lawsuit").

Plaintiff and Defendant desire to enter into this Settlement Agreement to discharge all claims and counterclaims against all parties resulting from the allegations asserted in the Lawsuit upon the payment of the settlement amount, the terms and conditions of which are set forth herein. The parties hereby agree as follows:

1. In consideration of the payment set forth herein, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs hereby completely release and forever discharge and hold harmless the Town of Copake, Argonaut Insurance Company and Trident Insurance Services, LLC and its past, present and future attorneys, stockholders, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, of and from any and all past and present claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether based on a tort, contract or any other theory of recovery, and whether for compensation or punitive damages, consequential or direct damages, which Plaintiff now has, or in any way growing out of the Lawsuit, from the date this Settlement Agreement is executed to the beginning of time. In addition, Defendant hereby completely releases and forever discharges and holds harmless Plaintiff, and any of his attorneys, agents, servants, representatives, employees, parents, heirs and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether based on a tort, contract or any other theory of recovery, and whether for compensation or punitive damages, consequential or direct damages, which Defendant now has or which may hereafter accrue or otherwise be acquired on account of, or in any way growing out of the Lawsuit, from the date this Settlement Agreement is executed to the beginning of time.
2. This release shall be a fully binding and complete settlement between Plaintiff and Defendant and all parties represented by or claiming through them.

3. Upon the execution of this Settlement Agreement and Release, and the satisfaction by Defendant of the payment as set forth in paragraph 4 below, Plaintiff and Defendant agree to dismiss all claims, and counterclaims, and allegations arising out of the Lawsuit with prejudice, without costs.

4. In consideration of the promises and agreements set forth herein, Defendant hereby agrees to pay to Plaintiffs through its attorneys and remit a settlement check made payable to JOHN D'APRILE and plaintiff's counsel as attorney, or via electric transfer to an account designated by Plaintiff's attorneys, in the amount of Thirty Thousand dollars (\$30,000.00), to be paid no later than 21 days following receipt by defendant of this fully executed general release. Plaintiff and Defendant agree and acknowledge that the payment of the sum specified in this Settlement Agreement is a full and complete compromise of all claims and counterclaims. In addition to the payment set forth above, Defendant further agrees to install a catch basin at the edge of Robin Road and culvert pipe extending one hundred and eight feet (108') along the northeast property line of the Plaintiff to a retention pond that shall be sixteen feet (16') in diameter and four feet (4') in depth to remediate any future damage to Plaintiff's property. Plaintiff shall execute a recordable easement and right of way permitting defendant to install the aforementioned drainage facilities. Plaintiff and Defendant agree and acknowledge that the payment of the sum specified in this Settlement Agreement and the work to be performed by the Defendant is a full and complete compromise of all claims and counterclaims.

5. Each party hereto shall bear all attorneys' fees and costs arising from the actions of its own counsel in connection with the Lawsuit and the Settlement Agreement and all matters and documents referred to herein. This Settlement Agreement is entered into in the State of New York and shall be construed and interpreted in accordance with its laws.

6. In entering into this Settlement Agreement, Plaintiff's and Defendant's representative represent that their principal signatories are of lawful age and of sound mind and are competent to enter into this Settlement Agreement and that they have relied upon the legal advice of personally selected counsel and that the terms of this Settlement Agreement have been completely read by all parties and explained to all parties and that those terms are fully understood and voluntarily agreed to.

7. Plaintiff and Defendant acknowledge and agree that this Settlement Agreement has been negotiated at arm's-length between persons knowledgeable in the matters dealt with herein. Accordingly, any rules of law that would require interpretation of any ambiguities against the party who drafted this Settlement Agreement do not apply and are expressly waived.

8. This Settlement Agreement and Release contains the entire agreement between Plaintiff and Defendant with regard to the matters set forth herein. There are no other inducements, understandings or agreements, verbal or otherwise, in relation thereto, between the parties except as herein expressly set forth. This Settlement Agreement and Release shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

9. This Settlement Agreement and Release shall become effective immediately upon execution.

Motion was carried.

A motion was made by Councilperson Wolf and was seconded by Councilperson Miller-Simmons that the bills from Highway Abstract # 11 and the bills from the General Abstract # 11 be paid. Motion was carried.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Mettler that the meeting be adjourned. Motion was carried.

Respectfully submitted,

Attachments:

