

TOWN OF MARCELLUS
TOWN BOARD MEETING MINUTES

Monday, July 13, 2015

A Meeting of the Town Board of the Town of Marcellus, County of Onondaga, State of New York was held on Monday, July 13, 2015 in the Town Hall, 24 East Main Street, Marcellus, New York. Those present were:

Mary Jo Paul, Supervisor
Kevin F. O’Hara, Councilor
John Scanlon, Councilor
Karen Pollard, Councilor
Chris Hunt, Councilor

Also present: Jim Gascon, Town Attorney; John Houser, Codes Officer; Phil Coccia, Recreation Director; Bill Southern, Chris Christensen, Deana & Doug Fellows, Mike & Renee Alexander, Ron Schneider, Karen Cotter, Joe Durand, Stacey & Michael Ossit, Chris Mallone, Skaneateles Journal; Susan Dennis, Deputy Town Clerk and Sandy Taylor, Town Clerk

Supervisor Paul opened the meeting with the Pledge to the Flag.

Public Hearing: Local Law 3- 2015 – “A Local Law Providing for the Defense and Indemnification Of Town of Marcellus Officers and Employees”

Supervisor Paul asked if anyone had anything to say in favor of the Local Law. There were no comments. Supervisor Paul asked if anyone had anything to say against the Local Law. There were no comments. The Public Hearing was closed at 7:05 pm.

Agenda Item Added: Councilor Scanlon made a motion seconded by Councilor O’Hara to add to the agenda the Toshiba contract. This will be number 5 on the agenda.

Ayes – Scanlon, Hunt, Paul, O’Hara and Pollard Carried

Accept Minutes: Councilor O’Hara made a motion seconded by Councilor Pollard to accept the Town Clerks minutes from the June 8 and June 25, 2015 meetings.

Ayes – Scanlon, Hunt, Paul, O’Hara and Pollard Carried

The

Abstract of Audited Vouchers was given to the Board Members as submitted by the Town Clerk, Abstract #7 as of July 9, 2015, Claim Numbers 142378-142385, 142390-142444, 142454 – 142475.

	<u>Expenses</u>
General Fund	\$12,782.79
General Fund – Part Town	647.03
Highway – Town Wide	3,251.16
Highway – Part Town	34,000.50
Fire District	74,925.00
Ambulance Fund	70,760.25
Sewer District	13,500.00
Trust and Agency	<u>24.00</u>
 Total	 \$209,890.73

Bills paid between meetings: The following bills were paid on July 1, 2015.

<u>Voucher Number</u>	<u>Name</u>	<u>Amount</u>
142386	Constellation	\$55.39
142387	Constellation	3.14
142388	Constellation	3.20
142389	Constellation	<u>.73</u>
	Total	\$62.46

Board Members were given copies of the Activity Report as of June 29, 2015 and monthly statement of bank balances as of May 2015.

	<u>Total Revenue</u>	<u>Total Expense</u>
General Fund	\$1,028,737.57	\$ 508,978.72
General Fund – Part Town	178,991.14	66,637.17
Highway – Town Wide	432,869.01	201,605.58
Highway – Part Town	315,686.99	128,576.16
Fire District	509,312.28	486,147.50
Hydrant Fund	90,046.62	79,305.65
Ambulance Fund	283,166.60	154,327.50
Sewer District	122,454.33	274,423.50
Water District	94,720.83	10,687.82

Councilor Scanlon made a motion seconded by Supervisor Paul to approve and pay the bills, approve the monthly activity report as of June 29, 2015 and the monthly statement of bank balances as of May 2015.

Ayes –Scanlon, Hunt, Paul, O’Hara and Pollard Carried

Adoption of Local Law 3- 2015: A Local Law Providing for the Defense and Indemnification of Town of Marcellus Officers and Employees.

**TOWN OF MARCELLUS
TOWN BOARD RESOLUTION**

July 13, 2015

The following resolution was offered by Councilor Scanlon, who moved its adoption, seconded by Councilor Hunt, to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. C-2015, “A Local Law Providing for the Defense and Indemnification of Town of Marcellus Officers and Employees,” which local law sets forth that the Town will provide legal defense and indemnification for Town officers and employees in certain enumerated civil and criminal matters which arise out of the officers’ and employees’ performance of their public employment and/or duties, was

presented and introduced at a regular meeting of the Town Board of the Town of Marcellus held on June 8, 2015; and

WHEREAS, a public hearing was held on such proposed local law on this 13th day of July, 2015, by the Town Board of the Town of Marcellus and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Marcellus in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, the enactment of Proposed Local Law No. C-2015 has previously been determined to be an unlisted action and will have no significant effect on the environment thus concluding the SEQR review process; and

WHEREAS, it is in the public interest to enact said Proposed Local Law No. C-2015.

NOW, THEREFORE, it is

RESOLVED, that the Town Board of the Town of Marcellus, Onondaga County, New York, does hereby enact proposed Local Law No. C-2015 as Local Law No. 3-2015 as follows:

“TOWN OF MARCELLUS

PROPOSED LOCAL LAW NO. 3 of 2015

A LOCAL LAW PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF TOWN OF MARCELLUS OFFICERS AND EMPLOYEES

Be it enacted by the Town Board of the Town of Marcellus as follows:

SECTION 1. AUTHORITY

This local law is enacted pursuant to the New York State Constitution, New York Municipal Home Rule Law § 10 and Public Officers Law §17.

SECTION 2. DEFINITIONS

EMPLOYEE – Any person holding a position by election, appointment or employment in the service of the Town of Marcellus 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.

SUPERVISOR – The Supervisor of the Town of Marcellus.

TOWN – The Town of Marcellus, New York.

TOWN ATTORNEY – The duly appointed attorney of the Town of Marcellus.

TOWN BOARD – The Town Board of the Town of Marcellus.

SECTION 3. PROVISION OF DEFENSE OF EMPLOYEE

- A. Upon compliance by the Employee with the provisions of Section 5 of this Local Law, the Town shall provide for the defense of the Employee:
1. in any civil action or proceedings 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; or
 2. in any criminal proceeding in a state or federal court arising out of any act which occurred while the Employee was acting within the scope of his or her public employment or duties, provided the Employee is acquitted or the criminal charges against the Employee are dismissed.
- B. Subject to the conditions set forth in this Local Law, the Employee shall be represented by the Town Attorney or an attorney employed or retained by the Town for the defense of the Employee. The Town Board shall employ or retain an attorney for the defense of the Employee whenever: the Town does not have a Town Attorney; the Town Board determines based upon its investigation and review of the facts and circumstances of the case that representation by the Town Attorney would be 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. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such attorney 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 entitled to representation under the terms and conditions of this Local Law. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Town. Any dispute with respect to representation of multiple Employees by the Town Attorney or by an attorney employed or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved by the court.
- C. Where the Employee delivers process and a request for a defense to the Town Attorney or the Supervisor as required by Section 5 of this Local Law, the Town Attorney or the Town Board, as the case may be, shall take the necessary steps including the retention of an attorney under the terms and conditions provide 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.

SECTION 4. INDEMNIFICATION OF EMPLOYEE

- A. Subject to the conditions set forth in this Local Law, the Town shall indemnify and hold harmless its Employee in the amount of any judgment obtained against such Employee 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 within the scope of his public employment or duties, provided, further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Town Board.
- B. The duty to indemnify and save harmless prescribed by this Section shall not arise where the injury or damages result from intentional wrongdoing or recklessness on the part of the Employee.
- 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 § 51 of the General Municipal Law; 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 reasons of an adjudication that an Employee acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of New York State or of the United States.
- D. The limit of indemnification under this Local Law shall be the limit of liability in the pertinent and applicable public officials' and/or employees' liability insurance policy maintained by the Town, and all Employees shall fully cooperate with said insurer, and failure to so cooperate shall be a waiver of any rights of the Employee under this Local Law.

SECTION 5. CONDITIONS OF DEFENSE AND INDEMNIFICATION

- A. The duty to defend provided in this Local Law shall be contingent upon:
 - 1. delivery to the Town Attorney or, if none, to the Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he/she is served with such document; and
 - 2. 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 that the Town provide for the Employee's defense pursuant to this Local Law unless the Employee shall state in writing that a defense is not requested.
- B. The duty to indemnify and save harmless prescribed by this Local Law shall be conditioned upon the full cooperation of the Employee in the defense of such action or proceeding and in defense of any action or proceeding against the Town based upon the same act or omission of the Employee, and in the prosecution of any appeal.

- C. 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, personally or by certified or registered mail, within thirty (30) days of the date of entry or settlement, upon the Supervisor; and if not inconsistent with the provisions of this Local Law, the amount of such judgment or settlement shall be paid by the Town.

SECTION 6. BENEFITS TO EMPLOYEES

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

SECTION 7. CONSTRUAL OF PROVISIONS

- A. The provisions of this Local Law shall not be construed to alter, limit or modify the rights and obligations of any insurer under any policy of insurance.
- B. Except as otherwise specifically provided in this Local Law, the provisions of this Local Law shall not be construed in any way to impair, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of any public entity by, in accordance with or by reason of any other provision of state or federal statutory or common law.

SECTION 8. NOTICE BY CLAIMANT

This article shall not in any way affect the obligation of any claimant to give notice to the Town under § 50-e of the General Municipal Law or any other provision of law.

SECTION 9. SEVERABILITY

If any clause, sentence, paragraph, subdivision or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

SECTION 10. EFFECTIVE DATE

This Local Law shall be effective upon filing with the office of the Secretary of State.”

The question of the adoption of the foregoing resolution was duly put to a vote, the vote was as follows:

John Scanlon	Councilor	Voted	Yes
Chris Hunt	Councilor	Voted	Yes
Kevin O’Hara	Councilor	Voted	Yes
Karen Pollard	Councilor	Voted	Yes
Mary Jo Paul	Supervisor	Voted	Yes

The foregoing resolution was thereupon declared duly adopted.

DATED: July 13, 2015

Red House: Councilor O’Hara made a motion seconded by Councilor Hunt to approve the Red House Arts Center, Inc. to present Much Ado About Nothing on July 14, 2015 at 7:00 pm. This will be held at Marcellus Park with a rain location of Driver Middle School. The cost will be \$500.00

Ayes – Scanlon, Hunt, Paul, O’Hara and Pollard Carried

Toshiba Contract (Added Item): Supervisor Paul received a Toshiba Contract today. This contract would combine the two contracts (One for the upstairs copier and one for the downstairs copier) into one for a total of \$96.00 per month. Jim Gascon, Town Attorney, has made some changes to the contract and will have Supervisor Paul initial them before we send it back to Toshiba. Councilor O’Hara made a motion seconded by Councilor Scanlon to approve the modified contract for Toshiba.

Ayes – Scanlon, Hunt, Paul, O’Hara and Pollard Carried

Insurance Review: After reviewing the insurance contract from NYMIR and Reagan’s, some of the Councilors had some questions. Supervisor Paul is going to contact both representatives and see if they can come to the July 23, 2015 Workshop Meeting to answer any questions.

Falls Road Refund: After some discussion on the amounts to be refunded for residents in the Falls Road Water District, it was decided that Supervisor Paul would rework the numbers. Once the numbers are reworked, it will be put on a future agenda.

Safety Committee: The safety committee meets on a quarterly basis. The following six people are on the safety committee, John Houser, Codes Officer; Chris Hunt, Councilor; John Scanlon, Councilor; Don MacLachlan, Highway Superintendent; Keith Ramsden, Park Employee; and Sandy Elsey, Secretary to Parks & Rec and Highway. It was suggested that they meet more often as needs arise. Discussion ensued regarding the proper protocol for employees to make the Safety Committee aware of such issues.

PUD (Planned Unit Development): Supervisor Paul went over the Town Boards responsibility as well as the responsibility of the Planning/Zoning Board if the Town should ever be presented with an application. Jim Gascon, Town Attorney, suggested that we don’t get too far into the process until we are presented with one and then go through it step by step.

Reserves, Bank Accounts: After some discussion, Supervisor Paul will reduce the numbers so that there is a total of \$10,000 in unemployment insurance reserves for each fund. Supervisor Paul would like to send out a press release so that the residents have some clarification on the finances of the Town.

Supervisors Updates:

1. Community Development grant for \$37,000 for the renovations of bathrooms at the Park has been approved by Onondaga County and in October will be approved by HUD.
2. The Highway Department did an excellent job of getting the railing by the ramp at the Town Hall painted and secured.
3. The Town will be receiving additional money (over \$38,000) from the County for plowing.
4. In today's mail, the Town received the final paperwork for the BAN to Bond. Jim Gascon, Town Attorney, was going over all the papers with the Supervisor. Everything has to be signed and back in their hands by Thursday, July 16, 2015.

Items from the Board:

1. Councilor O'Hara would like to thank everyone for all their help in the Teal There's a Cure Race held on July 4, 2015. There were over 500 participants this year.
2. Councilor Scanlon noted that the Highway Superintendent is not at this meeting. He would like to talk to him about the daily activity logs and certifications for working on air brakes.

Items from the Floor:

1. Bill Southern, Sheehan Road, asked about the results from the water tests. Supervisor Paul stated that the results are in. Joe Durand, from TDK Engineers, will contact us with his analysis of the test results.

Councilor Scanlon made a motion seconded by Councilor Hunt to adjourn the Marcellus Town Board meeting at 8:45 P.M.

Ayes – Scanlon, Hunt, Paul, O'Hara and Pollard

Carried

Respectfully submitted,

Sandy Taylor,
Town Clerk