

## TOWN BOARD MEETING

The Regular Meeting of the Town Board of the Town of Cortlandville was held at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, with Supervisor Tupper presiding.

Members present:

Supervisor, Richard C. Tupper  
Councilman, Theodore V. Testa  
Councilman, John C. Proud  
Councilman, C. Randolph Ross  
Councilman, Douglas E. Withey  
Town Clerk, Kristin E. Rocco-Petrella

Others present were: Town Attorney, John A. DelVecchio; Highway Sup't. Glenn Bassett; Court Clerk, Pamela Bassett; Deputy Town Clerk, Patricia Romer; Cortlandville Planning Board Chairperson, Katherine S. Wickwire; Cortland County District Attorney, Patrick Perfetti; Vincenzo Perfetti; Gia Perfetti; Town Residents: Robert Martin; Pamela Jenkins; Stephen Flatt; Thomas Williams; Rebecca Bryan; and Ann Hotchkin.

Supervisor Tupper called the meeting to order.

Councilman Proud made a motion, seconded by Councilman Ross, to approve the Draft Town Board Minutes of August 21, 2019. All voting aye, the motion was carried.

Councilman Withey made a motion, seconded by Councilman Proud, to receive and file the Cortlandville Board of Assessment Review Minutes of 2018. All voting aye, the motion was carried.

The Draft Town Board Minutes of September 4, 2019 were presented to the Board for their review.

RESOLUTION #211      AUTHORIZE SUPERVISOR TO SIGN PURCHASE  
ORDER #1411

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Motion by Councilman Proud  
Seconded by Councilman Testa

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey      NAY – 0  
ADOPTED

BE IT RESOLVED, the Town Board does hereby authorize and direct the Supervisor to sign Purchase Order #1411 submitted by Highway Sup't. Glenn Bassett to be paid to CB Truck Bodies & Equipment, to purchase one (1) Knapheide Platform Body PVMX-413C, 11'3" long x 96" wide, for the total cost of \$2,980.00.

There was a brief discussion regarding payment of the vouchers. Councilman Proud commented on the vouchers for the re-permitting of the Town's wells by the Susquehanna River Basin Commission (SRBC), which is a federal-interstate coordinating agency in charge of the water supply allocation among New York State, Pennsylvania, and Maryland. He explained that the bills related to the permit covered the consultant fee and the SRBC permit fee. The wells must be re-permitted periodically. Councilman Proud explained that the Water & Sewer Sup't. Alteri was requesting an increase in the daily pumpage from the wells to remain compliant in the future if the demand increased. Councilman Proud stated that he hoped the Town would receive final approval by the SRBC's next quarterly meeting.

RESOLUTION #212      AUTHORIZE PAYMENT OF VOUCHERS – SEPTEMBER

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Motion by Councilman Withey  
Seconded by Councilman Proud

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey      NAY – 0  
ADOPTED

BE IT RESOLVED, the vouchers submitted have been audited and shall be paid as follows:

Funds A, B, DA, DB, HG, SF, SS, SW	Voucher #1330-1410	
	General Fund A	\$ 10,137.04
	General Fund B	\$ 8,536.48
	Highway Fund DA	\$ 0.00
	Highway Fund DB	\$ 19,182.03
	Gutchess Lumber SC Project HG	\$ 0.00
	C'Ville Fire District SF	\$ 0.00
	Sewer Fund SS	\$ 16,037.10
	Water Fund SW	\$ 46,864.20
Funds CD1, CD3, CD4	Voucher #7-8	
	BMills Rehab CD1	\$ 0.00
	Town Wide Rehab CD3	\$ 0.00
	Business Devl CD4	\$ 610.90
Funds TA, TE	Voucher #35-36	
	Trust & Agency TA	\$ 677.52
	Expendable Trust TE	\$ 0.00

Supervisor Tupper offered privilege of the floor to Cortland County District Attorney, Patrick Perfetti.

Cortland County District Attorney, Patrick Perfetti was present to discuss significant changes made this last legislative session in criminal procedure law in the State of New York to be effective January 1, 2020. He discussed two matters in particular that are linked together: Discovery process and vehicle and traffic tickets. The state legislature reformed the Discovery process in a criminal matter. Discovery is the process in a criminal matter where upon request of the Defense, the prosecutor gives over information requested (Criminal Procedure Law (CPL) Section 240). As of January 1, 2020, that statute has been repealed and CPL Section 245 goes into place, which will require the DA's Office to turn over the entire contents of the case file within 15 days of the defendant's arraignment. Failure to do so would prohibit the DA's Office from declaring readiness for trial.

DA Perfetti explained that in 2018 his office received 1,614 cases, of which 156 cases advanced to County Court and 9 cases were tried. Due to the changes in the law, the entire 1,614 cases would now all require the Discovery process. As a result of the change in law, DA Perfetti has asked the County Legislature for five additional personnel to assist him with the new requirements. 1 Attorney, 2 Paralegals, 1 Keyboard Specialist, and 1 Administrative Executive to be in charge of the DA's proposed Traffic Diversion Program.

DA Perfetti explained to the Board that in 2018 he proposed a "Traffic Diversion Program" to the County Legislature. The Program was proposed as a convenience to his office and to citizens as a means of handling vehicle and traffic tickets within an administrative process as opposed to a criminal court process. Cortland County handles approximately 40,000 traffic tickets per year with Cortlandville Court being the busiest town court in terms of traffic tickets. DA Perfetti asked the Board for support by talking to the Cortlandville Legislators, as the County Administrator's proposed budget does not allow for any new positions.

DA Perfetti clarified that traffic tickets are not under the Discovery statute, traffic tickets are under the Vehicle and Traffic Law while the Discovery statute is a criminal statute. However, the change in the speedy trial statute now makes the Discovery process applicable to all Vehicle and Traffic matters. It increases the workload in the DA's office exponentially. DA Perfetti explained that if he does not receive the support requested, the DA's office will no longer be able to handle all Vehicle and Traffic enforcement for the Town, but only the matters that are criminal in nature. The prosecution of the Vehicle and Traffic cases could be turned over to law enforcement agencies or to the municipal attorneys. However, unless municipal attorneys were given more resources, they would not be able to keep up with the caseload either.

DA Perfetti recognized two main concerns with the Traffic Diversion Program: 1) the ability of the DA's office to continue the Vehicle and Traffic prosecutions; and 2) the concern regarding revenue. In terms of the Traffic Diversion program, he is unable to identify how much money it can produce, but said it would be enough to pay for the cost of the Traffic Diversion program and to pay for the Administrative Executive's salary. He would advocate that surplus funds be used to compensate townships for the revenue they would have lost. Any remaining funds would be at the discretion of the Legislature. DA Perfetti explained that he has been visiting all municipalities to discuss the changes in the statute and has been discussing this at the County level. He stressed that the gravity of the problem has not been comprehended.

Attorney DelVecchio explained to the Board how a traffic diversion program works: a person receives a traffic ticket, they then pay a fee rather than going through a court process and that fee goes to directly to the County. If the person complies with the program, the ticket is dismissed and no fine money is collected at the conclusion of the case. The Town would lose out

on those fines. As proposed by DA Perfetti, any overage collected on the initial administrative fee is supplied to the Town. Supervisor Tupper asked DA Perfetti if he thought out of 40,000 tickets that at least 75% of motorists charged would go the administrative route. DA Perfetti replied that he could not predict that with the program only being in its first year, but that the program has been well received in other counties. Supervisor Tupper asked how much money could be expected to be distributed back to the Town; the Town receives approximately \$275,000 per year. DA Perfetti replied that he doesn't control the Treasury and that he only has certain control over asset seizures, but that he has recommended to the County Legislature that they make sure the towns don't lose any money. Unfortunately, the reality is that if he isn't able to set up the proposed program, then the DA's office would not handle the enforcement and it could end up being no money at all. DA Perfetti stressed that he is an advocate for the towns and would make sure the program was run fairly and that it would be a benefit to all involved.

Councilman Proud inquired about the time schedule for the program as it goes into effect in 2020. DA Perfetti responded that he has procedures drafted and they have been contemplated by the Legislature.

Councilman Ross publically thanked DA Perfetti's office for assistance in a case that the Town recently resolved to its satisfaction.

Supervisor Tupper thanked DA Perfetti for his presentation.

At this time in the meeting, Supervisor Tupper moved to agenda items I-5, I-6 and I-7 as they concerned two people in attendance that had prior engagements to attend.

Supervisor Tupper addressed Katherine S. Wickwire's letter of resignation for retirement as Chairperson and Member of the Town Planning Board. He and the Board expressed their sincere thanks and appreciation to Ms. Wickwire, who was in attendance, for her 31-years of service and dedication to the Town. It was with deep regret that the Board accepted her resignation for retirement.

RESOLUTION #213      ACCEPT RESIGNATION FOR RETIREMENT FROM  
KATHERINE S. WICKWIRE FROM THE CORTLANDVILLE  
PLANNING BOARD

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Motion by Councilman Proud

Seconded by Councilman Testa

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey      NAY – 0  
ADOPTED

WHEREAS, after 31-years of service to the Town of Cortlandville, serving as a Member of the Cortlandville Planning Board since June 28, 1988 and as Chairperson since January 29, 1991, Katherine S. Wickwire submitted her letter of resignation for retirement to the Town Clerk, therefore

BE IT RESOLVED, the Town Board does hereby accept the letter of resignation, with deep regret and sincere appreciation for her service, from Katherine S. Wickwire as a Member and Chairperson of the Cortlandville Planning Board effective September 25, 2019, and it is further

RESOLVED, that the resignation is hereby received and filed.

RESOLUTION #214      APPOINT CHRISTOPHER B. NEWELL AS CHAIRPERSON  
TO THE CORTLANDVILLE PLANNING BOARD

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Motion by Councilman Proud

Seconded by Councilman Testa

VOTES: AYE – Tupper, Proud, Testa, Ross, Withey      NAY – 0  
ADOPTED

WHEREAS, due to the resignation of Katherine S. Wickwire as a Member and Chairperson of the Cortlandville Planning Board, a vacancy has occurred, therefore

BE IT RESOLVED, the Town Board does hereby appoint Christopher B. Newell of 4446 Cosmos Hill Road, Cortland, New York as Chairperson to the Cortlandville Planning Board, commencing September 25, 2019 and shall expire December 31, 2019.

Supervisor Tupper discussed the vacancy on the Town Planning Board. He explained that the Town received two resumes and found Ann B. Hotchkin's resume to be impressive and considered her to be a great candidate. For almost three decades, Mrs. Hotchkin previously worked for Thoma Development Consultants assisting municipalities in development goals and grant writing, and is an 18-year member of the County Planning Board, serving as Chair since 2010. Supervisor Tupper requested the Board appoint Mrs. Hotchkin to the vacant position.

RESOLUTION #215                      APPOINT ANN D. HOTCHKIN TO THE  
CORTLANDVILLE PLANNING BOARD

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Motion by Councilman Withey

Seconded by Councilman Proud

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey                      NAY – 0  
ADOPTED

WHEREAS, due to the resignation of Planning Board Member Katherine S. Wickwire there is a vacancy on the Cortlandville Planning Board, and

WHEREAS, resumes of perspective applicants have been reviewed by the Town Supervisor and the Town Board, therefore

BE IT RESOLVED, the Town Board does hereby appoint Ann D. Hotchkin of 671 McLean Road, Cortland, New York to the Cortlandville Planning Board, commencing September 25, 2019 and shall expire December 31, 2023.

Supervisor Tupper and the Board welcomed Mrs. Hotchkin to the Town Planning Board and thanked her for her interest.

Supervisor Tupper offered privilege of the floor to Pamela Jenkins.

Town resident Pamela Jenkins spoke with regard to Greg Leach's most recent, September 12, 2019, submission for a Conditional Permit for a commercial garage on his 3.11-acre parcel trash business parcel. Mr. Leach reapplied for a Conditional Permit for a commercial garage, which Ms. Jenkins said he is ineligible to apply for as he does not own or operate a commercial garage according to the Town's code definition. Ms. Jenkins stated that examples of commercial garages are Monroe Muffler, Tallmadge Tire and CARS. She stated that Mr. Leach owns and operates a trash and recycling business and that the narrative he signed details how the building would be used for his trash and recycling business.

Ms. Jenkins stated that in October of 2017, and again in June of 2019, as a result of the Article 78 proceeding against the Town of Cortlandville, Judge Cerio's orders negated all actions taken by the Town on Mr. Leach's Conditional Permit application for the 1300 square foot trash business building that Mr. Leach built on his trash business parcel. Ms. Jenkins stated that Mr. Leach never appealed that Order. She added that each and every other time since 2003 that Mr. Leach built or expanded his trash business, he was required to obtain a Use Variance because his business is prohibited in B2 of area 1 of the Aquifer Protection District. Ms. Jenkins said that Mr. Leach must be required to seek a Use Variance for this trash business expansion because the Judge ordered that the Town must comply with Town Zoning Laws and the State Environmental Quality Review Act Law.

Ms. Jenkins apprised the Board that she filed a notice with the Town Clerk, including 7 copies, regarding her intent to appeal the determination of PZO Bruce Weber, who said Mr. Leach did not need to apply for a Use Variance, but could apply instead for a Conditional Permit. She addressed Town Board members and Attorney DelVecchio and said PZO Weber has indicated that he would rely on his determination of the 2017 Use Variance. Ms. Jenkins requested that the Board inform PZO Weber that it is Ms. Jenkins right under NYS Law to appeal his determination that Mr. Leach does not need to apply for a Use Variance. She also stated that she requested PZO Weber's determination on the permit application. Ms. Jenkins requested that Attorney DelVecchio ensure the required legal notice is published and that she be placed on the agenda of the next ZBA meeting for her to be able to appeal the determination of PZO Weber.

Councilman Ross stated he would not speak for the Town Attorney, who would render his own advice, but would respond to Ms. Jenkins privilege of the floor presentation. Councilman Ross cited cases that make it quite clear that a municipality cannot require that an applicant apply for an additional use variance, in order to expand a use for which a use variance has already been granted on that particular property. Those cases are:

*Matter of Scarsdale Shopping Center Associates, LLC v. Board of Zoning Appeals of Town of Brookhaven*, 64 A.D.3d 604, 606, 882 N.Y.S.2d 308 (2d Dept. 2009): “a use for which a use variance has been granted is a conforming use and, as a result, no further use variance is required for its expansion.”

*Borer v. Vineberg*, 213 A.D.2d 828, 830, 623 N.Y.S.2d 378 (3d Dept. 1995): “The Board [of Zoning Appeals] cannot prohibit the expansion of a conforming use authorized by a [use] variance.”

*Angel Plants, Inc. v. Schoenfeld*, 154 A.D.2d 459, 461, 546 N.Y.S.2d 112 (2d Dept. 1989): “the appellant [ZBA] applied an incorrect standard in finding that it was necessary for the petitioner to apply for a further use variance in order to expand its business premises which already had the benefit of a use variance. Accordingly, the Supreme Court did not err in annulling that determination. We note that the petitioner requires no further use variance and the appellant’s jurisdiction is limited to the area variances, if any, sought by the petitioner.”

Councilman Proud made a motion, seconded by Councilman Testa, to receive and file the monthly report of Code Enforcement Officer, Kevin McMahon for the month of August 2019. All voting aye, the motion was carried.

Councilman Proud made a motion, seconded by Councilman Withey, to receive and file the monthly report of the Town Clerk for the month of August 2019. All voting aye, the motion was carried.

Councilman Withey made a motion, seconded by Councilman Proud, to receive and file the monthly report of Town Justice Casullo for the month of August 2019, and for Town Justice LeFevre for the month of August 2019. All voting aye, the motion was carried.

There was discussion regarding the Board’s concerns over the loss of revenue for the Town Court and the impact it has on the Town budget. Attorney DelVecchio commented that there is a “traffic bureau” in the Rochester area that serves as a “regional court” and stated that he could do some further research on the matter.

Councilman Proud made a motion, seconded by Councilman Testa, to receive and file the monthly report of the Cortland Community SPCA for August 2019. All voting aye, the motion was carried.

Councilman Withey made a motion, seconded by Councilman Proud, to receive and file the monthly report of the Supervisor for the month of August 2019. All voting aye, the motion was carried.

Councilman Testa made a motion, seconded by Councilman Proud, to receive and file correspondence from Charter Communications, dated September 6, 2019, regarding programming services. All voting aye, the motion was carried.

Councilman Testa made a motion, seconded by Councilman Proud, to receive and file correspondence from Charter Communications, dated September 15, 2019, regarding programming services. All voting aye, the motion was carried.

Councilman Testa made a motion, seconded by Councilman Proud, to receive and file correspondence from Charter Communications, dated September 16, 2019, regarding programming services. All voting aye, the motion was carried.

Under new business, Town Clerk Rocco-Petrella commented that the 2019 Dog Census was underway. All residences, including rental units and apartment complexes, were mailed a dog census flyer and license form with instructions to respond by October 31, 2019 to avoid the \$5.00 enumeration fee and possible fines. Newspaper advertisements were published and information was made available on the Town's website, including a dog census online submission form for residents to easily respond online. Town Clerk Rocco-Petrella hoped that the census by mailing would have positive results. She noted that the last dog enumeration was conducted 10 years ago in 2009.

Attorney DelVecchio reported:

NYSERDA – Battery Storage Law and PILOT Resolution:

Attorney DelVecchio apprised the Board that he reached out to representatives from NYSERDA to inquire about scheduling a meeting with the Board to provide more details regarding a Battery Storage Law and PILOT Resolution for the Town to consider adopting. After discussion, Supervisor Tupper and the Board suggested a workshop be scheduled for October 23, 2019 at 7:00 p.m., or October 30, 2019 as a second option. Officials from other municipalities, as well as the public, would be invited to attend the open meeting. Attorney DelVecchio would report back to the Board on the time and date of the meeting.

Conditional Permit Application – Leach Properties, LLC (1834 Route 13):

Attorney DelVecchio commented that the resubmission of the Leach application was being handled by the Planning and Zoning Office. He thanked Mr. Ross for his comments. He stated that the application would be handled with fairness, professionalism and in the future will move forward.

Councilman Withey made a motion, seconded by Councilman Proud, to receive and file the executed Grant Agreement regarding the 2019 Community Development Block Grant Town-wide Housing Rehabilitation Project (CDBG #287HR323-19) for a grant in the amount of \$336,000. All voting aye, the motion was granted.

RESOLUTION #216      AUTHORIZE TOWN CLERK TO SEEK “REQUEST FOR PROPOSALS” FOR PROGRAM DELIVERY AND ADMINISTRATIVE SERVICES FOR THE NEW YORK STATE COMMUNITY DEVELOPMENT BLOCK GRANT TOWN-WIDE HOUSING REHABILITATION PROJECT (CDBG #287HR323-19)

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Motion by Councilman Proud  
Seconded by Councilman Testa

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey      NAY – 0  
ADOPTED

BE IT RESOLVED, the Town Board does hereby authorize the Town Clerk to seek “Request for Proposals” for program delivery and administrative services for the New York State Community Development Block Grant – Town-wide Housing Rehabilitation Project (CDBG #287HR323-19), and it is further

RESOLVED, the proposals are due no later than 12:00 p.m. on Wednesday, October 23, 2019 and shall be awarded at the Regular Town Board Meeting on Wednesday, November 6, 2019.

RESOLUTION #217      REAPPOINT GREGORY ROBINSON TO THE BOARD OF ASSESSMENT REVIEW

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Motion by Councilman Proud  
Seconded by Councilman Testa

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey      NAY – 0  
ADOPTED

BE IT RESOLVED, the Town Board does hereby reappoint Gregory Robinson, 938 Blue Creek Road, Cortland, New York, to the Cortlandville Board of Assessment Review for a five-year term commencing October 1, 2019 and expiring September 30, 2024.

RESOLUTION #218                      AUTHORIZE THE SUBORDINATION OF A DEFERRED  
PAYMENT LOAN AND AUTHORIZE SUPERVISOR TO  
EXECUTE THE SUBORDINATION AGREEMENT FOR  
MATTHEW AND HEATHER SHIMER FOR THE TOWN'S 2016  
COMMUNITY DEVELOPMENT BLOCK GRANT TOWN-  
WIDE HOUSING REHABILITATION PROGRAM  
(#287HR326-16)

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Motion by Councilman Proud

Seconded by Councilman Withey

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey                      NAY – 0

ADOPTED

BE IT RESOLVED, the Town Board does hereby authorize the subordination of a deferred payment loan held by the Town of Cortlandville with Matthew and Heather Shimer of 4074 Kinney Gulf Road, Cortland, New York to CFCU, and it is further

RESOLVED, the Town Board does hereby authorize and direct the Supervisor to execute the Subordination Agreement regarding their obligations for the 2016 Community Development Block Grant Town-Wide Housing Rehabilitation Program (#287HR326-16).

RESOLUTION #219                      AMEND RESOLUTION #199 OF 2019, "AUTHORIZE  
SUPERVISOR TO SIGN PURCHASE ORDER #0152" TO  
ACCOUNT FOR A PRICE INCREASE OF \$10.00 PER  
COMPUTER

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Motion by Councilman Proud

Seconded by Councilman Withey

VOTES: AYE – Tupper, Testa, Proud, Ross, Withey                      NAY – 0

ADOPTED

WHEREAS, per Resolution #199 of 2019, the Town authorized and directed the Supervisor to sign Purchase Order #0152 to be paid to HP Inc. to purchase eight (8) new desktop computers for offices in the Raymond G. Thorpe Municipal Building in order to be compatible with the upgrade from Windows 7 to Windows 10 (NYS AGG BUY Enterprise Desktops, Reference Model #31374936) at the unit price of \$547.83, for the total cost of \$4,382.64, and

WHEREAS, HP Inc. has upgraded the processor on the NYS AGG BUY to the i5 9500, resulting in a price increase of \$10.00 per computer, therefore

BE IT RESOLVED, the Town Board does hereby amend Resolution #199 of 2019, "Authorize Supervisor to Sign Purchase Order #0152", regarding the purchase of eight (8) new desktop computers for the offices in the Raymond G. Thorpe Municipal Building, due to a change in the HP model from the NYS AGG BUY (Reference Model #31666081), resulting in a price increase of \$10.00 per computer, for the unit price of \$557.83, and for the total cost of \$4,462.64.

Councilman Withey made a motion, seconded by Councilman Proud, to receive and file correspondence from Pam Jenkins, Cheri Sheridan and Olga Sheridan, dated September 16, 2019, regarding the definition of the Town's Zoning Code for commercial garages. All voting aye, the motion was carried.

There was a brief discussion regarding the amendment of Town Board Resolution #299 of 2018, “Authorize the Town Clerk to Adjust the Sewer Charge and Water and Sewer Penalties for 4<sup>th</sup> Quarter Billing 2019 for Property Located at 3717 Allen Drive”, to include a provision to set the 2020 Water and Sewer Benefit Tax at 1.00 units each. Supervisor Tupper recalled that Mr. Brisman had a substantial water leak due to an outside water hose that broke, resulting in over 189,000 gallons of water usage. At the time that the Board considered the adjustment of the sewer charge and penalties, the Board failed to consider the water and sewer benefit tax unit charges. After discussion, Councilman Proud suggested that if the Board adjusts the charges for sewer due to a leak it should be standard practice to consider the water and sewer benefit tax units at the same time. He stated that in the future, standard language be added to each resolution for consideration as a leak of such kind should not affect the benefit tax since it was not normal consumption and that the water usage would have been paid for via the water billing.

RESOLUTION #220                      AMEND TOWN BOARD RESOLUTION #299 OF 2018, “AUTHORIZE TOWN CLERK TO ADJUST THE SEWER CHARGE AND WATER AND SEWER PENALITES FOR 4<sup>TH</sup> QUARTER BILLING 2018 FOR PROPERTY LOCATED AT 3717 ALLEN DRIVE”, TO INCLUDE A PROVISION TO SET THE 2020 WATER AND SEWER BENEFIT TAX AT 1.00 UNITS EACH

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Motion by Councilman Proud  
 Seconded by Councilman Withey  
 VOTES: AYE – Tupper, Testa, Proud, Withey                      NAY – 0  
 ADOPTED

BE IT RESOLVED, the Town Board does hereby amend Resolution #299 of 2018, adopted December 18, 2018, as follows to include a provision authorizing the Town Clerk to set the 2020 Water and Sewer Benefit Tax Units to 1.00 units for both water and sewer:

RESOLUTION #221                      AUTHORIZE TOWN CLERK TO ADJUST THE SEWER CHARGE AND WATER AND SEWER PENALTIES FOR 4<sup>th</sup> QUARTER BILLING 2018 FOR PROPERTY LOCATED AT 3717 ALLEN DRIVE AND TO SET THE 2020 WATER AND SEWER BENEFIT TAX AT 1.00 UNITS EACH

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Motion by Councilman Proud  
 Seconded by Councilman Withey  
 VOTES: AYE – Tupper, Testa, Proud, Withey                      NAY – 0  
 ADOPTED

WHEREAS, a request was received from Henry Brisman to reduce the sewer charges for the 4<sup>th</sup> Quarter Billing 2018 for Account #749, for service to 3717 Allen Drive, tax map #96.05-02-05.000, and

WHEREAS, in December 2018 the Town Water and Sewer Department discovered that 3717 Allen Drive had extremely high water consumption and upon further investigation discovered that a garden hose located at the back of the house broke and was running water, and

WHEREAS, Water & Sewer Sup’t. Peter Alteri Jr. recommends the Town adjust the sewer portion of the outstanding bill since the majority of the water did not go into the sewer, therefore

BE IT RESOLVED, the Town Board does hereby authorize and direct the Town Clerk to reduce the sewer charge in the amount of \$1,020.74, and be it further

RESOLVED, the Town Clerk is further authorized and directed to set the 2020 Water and Sewer Benefit Tax Units to 1.00 units for both water and sewer.



Supervisor Tupper apprised the Board that he had one additional item to discuss. He commented that there was an issue with political signs being erected in the Town prior to the date allowed by Town Code. Town Code Enforcement Officer, Desiree Campbell wrote a letter addressed to the Chairs of both the Republican and Democratic political parties, explaining the Town's regulations for political signage and that the official date allowing such signs to be erected was September 21, 2019. Per Town Code, political signs are permitted 45 days prior to Election Day and must be removed within 14 days from the election. Supervisor Tupper indicated that the Republican Party was abiding by the CEO's letter, however the Democratic Party was not and erected signs as early as September 13, 2019. He asked that in the interest of fairness that all political signs erected early in the Town be taken down and put back up on September 21, 2019 to comply with Town Code. He added that offenders could be subject to a \$200/day fine for erecting the signs earlier than allowed.

Councilman Withey questioned if there would be a fine of \$200/day if the signs were removed, to which Supervisor Tupper responded there would not be. Councilman Withey asked Supervisor Tupper to read the section of the Code pertaining to political signs for the record. Supervisor Tupper read from the Town Code, §178-112 Permitted Signs, A(4)(5):

(4) Temporary signs, in Business, Industrial and Agricultural Districts, nonilluminated, less than 32 square feet announcing candidacy for election; no more than one per parcel; such signs shall be erected no more than 45 days prior to an election and are to be removed within 14 days from the election.

(5) Temporary signs, in R-1, R-2 and R-3 Districts, nonilluminated, less than six square feet per sign announcing candidacy for election. No more than five signs per parcel. Such signs shall be erected no more than 45 days prior to an election and are to be removed within 14 days from the election.

Councilman Withey questioned, "in light of the State's early voting that isn't part of the election process?" Supervisor Tupper stated that "early voting is early voting and gives voters the opportunity for their vote to be counted" on Election Day. Councilman Withey stated he was having trouble with the definition, because it was a process to get to an election. The State deemed it necessary to have early elections. He stated that he would comply if the Board agrees that early voting is not part of the election process.

Attorney DelVecchio stated that he addressed this issue with CEO Campbell when she came to him with the law. He stated it was an "interpretation question" and explained that CEO Campbell has the jurisdictional authority to make the determination. The letter she sent to both political parties was her pre-position stating that the 45-day period of time was from the date of the actual election. Attorney DelVecchio stated that the CEO has the authority to make that jurisdictional interpretation of the definition.

Councilman Withey stated that to have the authority to interpretation bothers him. He requested Attorney DelVecchio's interpretation. Attorney DelVecchio stated that the CEO's decision is subject to administrative appeal in front of the ZBA. He stated that her interpretation was not up to him and not up to the Town Board to decide.

Councilman Ross stated it seemed fair for both political parties to start at the same time.

Councilman Withey commented that CEO Campbell's letter was not delivered to the proper address, although it was eventually received. He questioned the interpretation of the Code.

Councilman Proud commented that that section has been in the Code for a period of time and stated that the intent was to not litter the town with political signs. He stated that if there is a question about it, the Board should go back to the Code and address the definition to say that Election Day is the day that the votes get counted. He added that there are a number of interpretations that could be had about when the process started, as the State Legislature changed the process this year. He noted that Republican candidates had to be announced around February/March 2019. Elections are important for people; however he stated that 45 days is a long enough period of time for political signs to be up to get the message out.

No further comments or discussion were heard.

Councilman Proud made a motion, seconded by Councilman Withey, to adjourn the Regular Meeting. All voting aye, the motion was carried.

The meeting was adjourned at 6:19 p.m.

Respectfully submitted,

Kristin E. Rocco-Petrella, RMC  
Town Clerk  
Town of Cortlandville

\*Note:

The draft version of this meeting was submitted to the Town Board for their review on October 2, 2019.

The final version of this meeting was approved as written at the Town Board meeting of \_\_\_\_\_.

DRAFT