

November 2, 2011

A regular monthly meeting of the Lockport Town Board was conducted at 7:30 p.m. on Wednesday, November 2, 2011, at the Town Hall, 6560 Dysinger Road, Lockport, New York.

Present were: Supervisor: Marc R. Smith

Town Council members: Cheryl A. Antkowiak
Paul H. Pettit
Mark C. Crocker
Paul W. Siejak

Also present: Nancy A. Brooks, Town Clerk, Daniel E. Seaman, Town Attorney, Deputy Town Clerk, Judi Newbold and Mr. Jay Krull.

Directly after the Pledge of Allegiance, Supervisor Smith opened the meeting as follows:

PRESENTATION: Mr. Jay Krull of Lockport, speaking on behalf of the Niagara Arts Guild, addressed the Town Board relative to an upcoming fund raiser to benefit the Santa House located at the Day Road Park as well as the Historic Palace Theatre. The fund raiser involves obtaining \$1 donations for paper rings which are then hooked together to form chains. They are hoping to form Lockport's longest paper chain, which will then be hung inside the Palace Theatre. The paper rings will be available at the Town Clerk's office and several other locations throughout the Lockport area during the period of November 5 – 18th.

In addition to the sale of paper rings, there will be a free holiday movie offered at the Palace on Nov. 18th, people can call in advance for tickets and there will also be door prizes and basket raffles

PUBLIC HEARING: 2012 Preliminary Town Budget

The Supervisor opened the Public Hearing for interested people to speak on the preliminary budget for the fiscal year beginning January 1, 2012 as required by Town Law section 108 for the purpose of considering the preliminary budget and the proposed salaries of the Town Officers as follows:

Town Supervisor.....	\$49,260.00
Councilmen/Deputy Supervisor (5@ <u>\$9,474.00</u>)...	\$47,370.00
Town Clerk.....	\$48,836.00
Superintendent of Highways.....	\$60,175.00

The floor was opened for the following comments:

Mr. Paul Black of Harding Avenue Ext. questioned why the Town Board has for the last few years utilized reserve funds to balance the budget. He is concerned that this process is not fiscally responsible. He stated that using savings is both foolish and unsustainable. He stated that we as a community have to learn to do more with less and the Town must budget accordingly. He asked when the Town officers expected that they can balance the budget without the use of reserves? He also stated that the budget as it appears is difficult for residents to understand. He asked what are the unexpended balances listed? Are these figures reserves, surplus or savings? What is the present total of reserves as it cannot be deduced from the budget?

There being no one else to speak to the matter, the Public Hearing on the Preliminary Budget was closed and the next Public Hearing opened.

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PUBLIC HEARING: 2012 Special District Amounts to be Raised by Taxation

The floor was opened on the Amounts to be raised by taxation which are as listed below:

Lockport Water District No. 3.....	\$ 571,291.00
Lockport Sewer District No. 3.....	\$2,707,441.00
Lockport Fire Protection.....	\$1,129,700.00
Carlisle Gardens Sewer District.....	\$ 72,415.00
Carlisle Gardens Refuse District.....	\$ 25,425.00
Carlisle Gardens Sidewalk District.....	\$ 7,200.00
Carlisle Gardens Light District.....	\$ 19,500.00
Lincoln Village Sewer District.....	\$ 20,880.00
Lockport Refuse District No. 2	\$ 958,500.00
Rapids Light District.....	\$ 2,450.00

No one spoke on the issue of the amounts to be raised by taxation and the Public Hearing was closed and the next hearing opened.

PUBLIC HEARING: 2012 Fire Contracts

The floor was opened for comment on the 2012 Town Fire Contracts which amounts are as listed below:

Rapids Fire Company, Inc.....	\$312,406.00
South Lockport Fire Company, Inc.....	\$328,116.00
Gasport Fire District No. 1.....	\$ 21,727.00
Wright's Corners Fire Company, Inc.....	\$312,406.00
Terry's Corners Fire Co., Inc.....	\$ 24,351.00

No one spoke on the issue of the 2012 fire contracts and the hearing was closed and the floor was opened for public comments.

PUBLIC COMMENTS:

Mr. David Mongiello of Day Road, spoke on several topics, some of which included: Brian Kolbe's desire to re-structure New York State government; Mr. Mongiello's circulation petitions calling for referendums to be placed on the ballot in 2012 for the following purposes: a) call for term limits for Town officers b) the creation of wards within the Town of Lockport and c) the prevention of conflict of interest by Town officials who are members of local political parties.

Martha Putnam of Keck Road read a statement of concern about two homes and yards on Keck Road which have been left un-kept for quite some time. The Building Dept. has been consulted but nothing has been done to change the situation at this time. She was told the properties are both in foreclosure but would like the Town Board to take action.

There being no other persons to speak before the Town Board, the public comment period was ended and the regular business meeting opened as follows:

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REGULAR BUSINESS MEETING:

1. Approval of Minutes

MOTION (2011-241): to approve the Minutes of Town Board meetings on 10/03/2011, 10/05/2011 and 10/19/2011, was made by Council member Siejak, seconded by Council member Crocker. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

2. Approval of Payment of Bills

MOTION (2011-242): to approve the payment of bills for the month of November was made by Council member Pettit, seconded by Council member Crocker. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

The bills for November consist of Vouchers #25318 – 25531 in the amount of \$536,977.36.

3. Communications.

The Town Clerk reported a letter from the Town Fire Prevention Bureau which lists a candidate for volunteer fire service within the Town of Lockport for Rapids Fire Co.

MOTION (2011-243): to approve Michael Wilson for volunteer fire service with the Rapids Fire Co. was made by Council member Pettit, seconded by Council member Antkowiak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

4. Building Inspector's Report

The Supervisor read the Building Inspector's Report for the month of October 2011, which states that 35 building permits were issued; \$3,860.00 was collected in fees; and the estimated cost of construction was \$996,014.00.

5. Supervisor's Monthly Financial Report

MOTION (2011-244): to approve the revised Supervisor's Monthly Financial Report for the period ending 10/31/2011, as was previously submitted to the Board, was made by Council member Antkowiak, seconded by Council member Siejak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

6. Resolution to approve an Environmental Easement for former Electruk Property

MOTION (2011-245): on a motion by Council member Crocker, seconded by Council member Pettit, the following resolution was duly ADOPTED: 5 AYES, 0 NAYS. Voting AYE: Antkowiak, Pettit, Crocker, Siejak, and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

RESOLVED, that the Supervisor of the Town of Lockport (the "Town") be, and hereby is, authorized to execute and deliver to the Commissioner of the Department of Environmental Conservation of the State of New York (the "Commissioner") that certain

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environmental easement (the "Environmental Easement") for real estate owned by the Town of Lockport which is located at and commonly known as 4922 I.D.A. Park Drive, Lockport, New York, 14094, substantially in the form set forth herein pursuant to Title 36 of Article 71 of the Environmental Conservation Laws of New York, and be it further

RESOLVED, that the Supervisor of the Town be, and hereby is, authorized by and on behalf of the Town to make, execute and deliver such other related agreements, certificates, instruments or documents, and to take such actions and to do all things which they may deem necessary or appropriate to execute and deliver the Environmental Easement to the Commissioner, including any modifications, amendments or changes to the Environmental Easement and such other related agreements and documents as are necessary, and be it further

RESOLVED, that the following constitutes the form of said easement hereby authorized:

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE New York STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this 2Nd day of November, 2011, between Owner(s) TOWN OF LOCKPORT, having an office at 6560 Dysinger Road, Town of Lockport, County of Niagara, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of

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Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 4922 I.D.A. Park Drive in the Town of Lockport, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 108.00 Block 1 Lot 55, being the same as that property conveyed to Grantor by deed dated May 26, 2011 and recorded in the Niagara County Clerk's Office in Instrument No. 2011-08929.

The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.37 +/- acres, and is hereinafter more fully described in the Land Title Survey dated September 8, 2011 prepared by TVGA Consultants, 1000 Maple Road, Elma, NY 14059-9530, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of State Assistance Contract Number: C303480, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g) (2) (iii) and Industrial as described in 6 NYCRR Part 375-1.8(g) (2) (IV)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

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(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

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G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: SiteNumber:E932132
Office of General Counsel

NYSDEC

625 Broadway

Albany NY 12233

With a copy to: Site Control Section

Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

Grantee's Acknowledgment

STATE OF NEW YORK)

) ss:
COUNTY OF ALBANY)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Dale Desnoyers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lockport, County of Niagara and State of New York, being part of Lot 12, Township 14, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the west line of lands dedicated to the Town of Lockport by instrument recorded in Liber 1868 of Deeds at page 268, distant 10 feet northerly from the intersection with the north line of lands dedicated to the Town of Lockport by instrument recorded in Liber 2287 of Deeds at page 49; thence northerly along the west line of I.D.A. Drive, a distance of 193.99 feet to a point; thence westerly at right angles, a distance of 308.25 feet to a point; thence southerly at an interior angle of 89°51'06", a distance of 193.99 feet to a point; thence easterly at an interior angle of 90°08'54" and parallel with the north line of the lands dedicated by the latter dedication hereinabove described, a distance of 307.75 feet to the point or place of beginning.

7. **Town Board Comments**

Councilwoman Antkowiak thanked the Lockport Public Library for all their assistance in bringing two programs to the Town Hall for residents to participate in: the pre-school story hour and the Nioga Adult Computer Classes. Both have been extremely successful.

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She also announced several other upcoming events including:

Winter Fest at Day Road Park: December 10th at 11:30 a.m. – 2:00 p.m. There will be sleigh rides, refreshments and of course Santa's Cottage will be open.

Day Road Park – the restrooms are being built at the present time and should be completed in the near future. She thanked Dave Miller and the Town Highway Dept. for the great job they are doing in building the restrooms.

Summer 2012 Sports Program – the summer program at Day Road Park will be a multi-sport camp, not just a soccer camp. It will involve the Challenger Sports Group teaching a different sport each day of the camp. Hopefully, this will appeal to even more children and will be available to a wide range of age groups.

Lastly, Councilwoman Antkowiak thanked all the Participation in Government students who attended and encouraged them to become involved with their community.

Councilman Siejak addressed Mr. Black's comments about the 2012 Town Budget stating that the Town Board had not utilized reserve funds for the years that he has been on the Council.

Councilman Pettit also welcomed the students in attendance and reminded the residents of the Winter Parking Ordinance which is a State law. Additionally, he reminded residents to remove large items placed in the right of way as to prevent damage to the items as well as damage to the Town snow plows.

Councilman Crocker addressed some of Mr. Black's budget comments, stating that that Town of Lockport is in very good financial condition and that the Town's finances are audited annually by an independent auditing firm, the results of which are available for public review.

8. Supervisor's Comments

Supervisor Smith talked to Martha Putnam's concerns and stated that the Board would look into the situation within her neighborhood to see what can be done.

9. Adjournment

MOTION (2011-246): to adjourn was made by Council member Pettit, seconded by Council member Siejak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

The meeting was ended at 8:02 p.m. The Lockport Town Board will next meet at 1:00 p.m. on Wednesday, November 16, 2011.

Respectfully submitted,

Nancy A. Brooks, RMC, CMC
Lockport Town Clerk