

TOWN OF ULYSSES
SPECIAL TOWN BOARD MEETING
MAY 25TH, 2010

Present: Supervisor Roxanne Marino; Council persons David Kerness, Kevin Romer (arrived after the votes were taken on the resolutions), Elizabeth Thomas and Lucia Tyler; Town Clerk Marsha L. Georgia.

Others Present: no others present.

Supervisor Marino called the Special Town Board to order at 7:05 pm and stated the first item on the agenda was Local Law #1 2010.

Ms. Marino moved, seconded by Ms. Tyler the following:

BE IT RESOLVED that the Town Board of the Town of Ulysses adopt Local Law #1 for 2010 A Local Law to require Operating Permits for Special Events in the Town of Ulysses.

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

SECTION 1. Definitions

a. "Special Event". For purposes of this Local Law, a special event is defined as follows: Any event or gathering in the Town of Ulysses, held on property located outside the A-2 zone as designated in the Town of Ulysses Zoning Ordinance, which will result in traffic generation of more than fifty vehicles

and

i. be more than eight (8) hours in duration;

and/or

ii. involve overnight camping on property which is not an approved overnight camping facility pursuant to the Zoning Ordinance of the Town of Ulysses.

b. The following shall not be considered a "special event" for purposes of this Local Law:

i. A non-commercial social gathering at a single family residence, including, but not limited to, a party, family reunion or wedding; or

ii. An event held on commercial property with available parking for such event.

c. "Operator". The person, entity or organization which organizes and operates a Special Event and the owner of the property where the event is held are collectively referred to as the "Operator" for purposes of this Local Law.

SECTION 2. Operating Permit required

a. No Operator shall hold a Special Event in the Town of Ulysses, or permit such an event to be held on property he or she owns, without first obtaining an Operating Permit from the Town of Ulysses as prescribed in this Local Law.

b. The Operating Permit shall be obtained at least five days before the commencement of the Special Event.

SECTION 3. Requirements

a. No Special Event shall be more than five days in duration.

b. No more than four Operating Permits per calendar year shall be issued to the same Operator or for the same property. Any applications for Operating Permits in excess of this limit must be made to the Town Board of the Town of Ulysses.

c. The Operator shall be responsible for safe operation of traffic and parking on the property where the Special Event is held and will provide an attendant to oversee and regulate traffic on the property.

d. The Operator shall provide proof of liability insurance for the Special Event in an amount of no less than \$1,000,000, naming the Town of Ulysses as additional insured. Any request to maintain a lower amount of insurance coverage will require the written consent of the Code Enforcement Officer.

e. If the Special Event will include overnight camping, the Operator will obtain all necessary approvals from the Tompkins County Health Department prior to applying for the Operating Permit from the Town of Ulysses.

SECTION 4. Procedure

a. The Operator of the Special Event shall apply to the Code Enforcement Officer of the Town of Ulysses for an Operating Permit for the Special Event on a form provided by the Town, which identifies the property where the event will take place by address and tax parcel number. The owner of the property where the event will be held must join in the application.

b. Every application for an Operating Permit shall be accompanied by the following:

i. an application fee set by resolution of the Town Board.

ii. an insurance binder or other written proof of insurance coverage as required by this Local Law.

iii. if the Special Event will include overnight camping, copies of all documents showing approval of the camping facilities by the Tompkins County Health Department.

SECTION 5. Penalties

a. Failure to comply with the requirements of this local law shall constitute a violation and shall be punishable by a fine of \$1,000.00 for the first violation and \$2,000.00 for each subsequent violation.

b. Each day of failure to comply with the requirements of this local law shall constitute a separate violation.

SECTION 6. Effective date

This local law shall take effect upon filing with the Secretary of State.

Ms. Marino aye

Ms. Tyler aye

Ms. Thomas aye

Mr. Kerness aye

Adopted

The Clerk will file this with the Secretary of State.

Resolution to Approve Hiring Bergman Associates

Resolution to Approve Hiring Bergmann Associates for Professional Planning Services to Complete the Agriculture and Farmland Protection Plan and Implement the 2009 Comprehensive Plan Following Town of Ulysses Procurement Policy Section 6.

WHEREAS, the Town Board of the Town of Ulysses adopted an updated Comprehensive Plan in 2009, and

WHEREAS, the Comprehensive Plan was prepared by a Town Board-appointed Comprehensive Plan Update Committee (CPUC) with professional planning assistance from Bergmann Associates, and

WHEREAS, Bergmann Associates was hired by the Town Board of the Town of Ulysses after an open competitive RFP process conducted in 2006, and

WHEREAS, the RFP process established that Bergmann Associates have the necessary professional skills to assist the CPUC and that its hourly rates were competitive with the two other top-rated firms identified by the selection committee,

WHEREAS, through the Comprehensive Plan process Bergmann's contract was amended to utilize Bergmann's professional planning services to assist the Town of Ulysses to prepare an Agricultural and Farmland Protection Plan, partially funded by a grant from the New York State Department of Agriculture and Markets, and it is necessary to extend the Bergmann contract to February 2011 to assist with completion of the AFPP, and

WHEREAS, the Town Board of the Town of Ulysses is committed to moving forward to implement strategies in the newly adopted 2009 Comprehensive Plan and the Town needs additional professional planning staff to assist with this effort, and

WHEREAS, the first step in strategy implementation is to complete a consistency review of the current Zoning Law with the newly adopted 2009 Comprehensive Plan, and

WHEREAS, Bergmann's previous contracts with Ulysses have given the firm familiarity with the town government, community characteristics, and zoning laws, and

WHEREAS, New York State General Municipal Law Section 104-b (2) (f), provides that a municipality may include a provision in its procurement policy outlining circumstances when, and types of procurement for which, the solicitation of alterative proposals or quotations will not be in the best interest of the municipality;

WHEREAS, section 6 of the Town of Ulysses procurement policy provides that such circumstances include professional services or services requiring special or technical skill;

WHEREAS, Bergmann has demonstrated that it has the requisite skill to perform professional planning services required by the Town and that it has the accountability, reliability, responsibility and skill for such services;

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Ulysses authorize the Supervisor to enter into 1) a contract extension for the Agricultural and Farmland Protection Plan and 2) a new contract to provide professional planning services to implement strategies in the 2009 Comprehensive Plan with Bergmann Associates for an amount not to exceed \$8000.

Ms. Marino aye
Ms. Tyler aye
Ms. Thomas aye
Mr. Kerness aye

Adopted

Approval of Bergmann Associates Contracts

**STANDARD FORM OF AGREEMENT
BETWEEN**

**OWNER AND CONSULTANT
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT made as of May 21, 2010 between the Town of Ulysses (hereinafter OWNER) and Bergmann Associates (hereinafter CONSULTANT). OWNER intends to engage the CONSULTANT in professional services pertaining to the development of a Zoning Analysis in order to achieve the goals and objectives of the OWNER in cost-effective and timely manner (hereinafter called the Project). The contract amount for these services is \$3,500.00 and shall be executed as a lump sum agreement. Additionally, the Contract shall allow the OWNER to engage the CONSULTANT on a time and materials basis for professional planning services as required and determined by the OWNER.

OWNER and CONSULTANT, in consideration of their mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - BASIC SERVICES OF CONSULTANT

1.1 CONSULTANT shall provide basic professional services for OWNER as specified in Exhibit "A", "Scope of Services" of this Agreement.

ARTICLE 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER.

2.2 This Agreement may be extended at the request of the OWNER for additional professional planning services with an amended scope of work and fee approved by the OWNER and CONSULTANT in writing.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

3.1 Designate a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Consultant's services for the Project.

3.2 Provide all criteria and full information as to Owner's requirements for the Project.
3.3 Assist CONSULTANT by placing at Consultant's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.

3.5 Furnish, or direct CONSULTANT to provide, Additional Services as stipulated in Article 2 of this Agreement or other services as required.

ARTICLE 4 - PERIODS OF SERVICE

4.1 CONSULTANT shall complete the Zoning Analysis within a period of 2 months from the date of this Agreement. The time and materials contract shall be in effect until either party provides, in writing, a request for termination of the contract, consistent with Section 6.1.

4.2 If significant changes in the scope or detail of the Project occur, or if the Project is delayed for reasons beyond Consultant's control, an equitable extension of the period of service shall be made.

4.3 If Consultant's services for planning and design are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond Consultant's control, CONSULTANT shall have the right to terminate the Agreement in accordance with paragraph 6.1.

ARTICLE 5 - PAYMENT PROVISIONS TO CONSULTANT

5.1 CONSULTANT shall submit statements each month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall pay CONSULTANT within 30 days of receipt of Consultant's statement detailing the charges for basic and additional services rendered (specifying charges for Farmland Protection Plan and Zoning Analysis and any other out of scope hourly charges).

5.2 If OWNER fails to make full payment due CONSULTANT for services and expenses within thirty days of Consultant's statement therefore, the amounts due CONSULTANT may be increased at the rate of 1-1/2 percent per month from said thirtieth day. If OWNER fails to make full payment due CONSULTANT for services and expenses within forty-five days of Consultant's statement therefore, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses, and interest charges.

5.3 In the event of termination by OWNER under paragraph 6.1 upon the completion of any phase of the Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT shall be paid for services rendered during that phase to date of termination. In the event of any such termination, CONSULTANT also will be reimbursed for all unpaid Additional Services and unpaid Reimbursable Expenses.

5.4 Reimbursable Expenses mean the actual out-of-pocket direct expenses incurred by CONSULTANT.

ARTICLE 6 - GENERAL CONSIDERATION

6.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 Reuse of Documents

All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect of the Project and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed.

6.3 Insurance/Liability

6.3.1 CONSULTANT shall procure and maintain the following insurance coverage for the duration of this Agreement:

Worker's Compensation Statutory Coverage

Comprehensive General Liability;

Bodily Injury and Property Damage \$1 mil per occurrence per aggregate year

Comprehensive Automobile Liability;

Bodily Injury and Property Damage \$1 mil per occurrence per aggregate year

Professional Liability Insurance \$1 mil per occurrence per aggregate year

6.3.2 Limitation of Liability

6.3.2(a) OWNER hereby agrees that to the fullest extent permitted by law, Consultant's total liability to OWNER for any and all claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause including, but not limited to Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total compensation received by CONSULTANT under this Agreement.

6.3.3 Severability and Reformation. Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

6.4 Controlling Law

This Agreement is to be governed by the law of the principal place of business of CONSULTANT.

6.5 Dispute Resolution

In the event of a dispute between the parties arising out of the terms of this Agreement or any services provided pursuant to its terms, the parties agree to participate in a mediated settlement conference before a mutually acceptable mediator whose fees will be shared equally by the parties. In the event that the parties are unable to agree upon a mediator they will ask the American Arbitration Association to appoint one. Participation in a mediated settlement conference shall be required before either party may pursue its claim in any other form of dispute resolution.

ARTICLE 7 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

7.1 The following Exhibits are attached to and made a part of this Agreement: 7.1.1 Exhibit A "Scope of Services", consisting of 1 page.

7.1.2 Exhibit B "Project Hourly Rates Table", consisting of 1 page.

7.2 This Agreement together with the Exhibits and schedules identified above constitute the entire

Agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER: CONSULTANT:

Address for giving notices: Address for giving notices:

28 East Main Street

200 First Federal Plaza

Rochester, NY 14614

Exhibit A Town of Ulysses

Scope of Services

The zoning analysis report will assist the Town of Ulysses in better understanding the current issues facing the Town. The zoning analysis report will identify updates necessary to address current issues, such as natural gas drilling associated with Marcellus shale, and consistency with the recently adopted Comprehensive Plan. The zoning analysis will assist the Town in prioritizing zoning tasks and provide an estimate for the level of effort and associated cost involved in updating the Town Zoning Law. This will allow for a smooth and cost effective transition from the comprehensive plan process to zoning and land use regulatory updates.

Our approach to this analysis includes the following tasks:

- Meet with representatives who utilize the zoning and land use regulatory codes of the Town on a regular basis including the zoning and code enforcement officer, and at least one representative from both the Zoning Board of Appeals and Planning Board and a member of the Town Board. This meeting will focus on identifying sections of the zoning and land use regulatory codes of the town that are working well and areas that need modification.
- Prepare a summary report comparing the comprehensive plan to the current zoning code to identify areas of conflict and consistency.
- Develop a summary report of suggested updates to the zoning and land use regulatory codes of the Town that will address current user concerns, potential issues facing the community and consistency with recommendations set forth in the Comprehensive Plan.
- Provide an estimated cost and timeline associated with the zoning and land use regulatory code updates.

The lump sum agreement for the Zoning Analysis includes the following:

- One (1) meeting with Town staff / representatives
- One (1) electronic copy of the final document, in Word and PDF
- Ten (10) color copies of final Zoning Analysis

Exhibit B Town of Ulysses

Project Hourly Rate Tables

The following hourly rates shall be applied to the completion of additional planning services. Bergmann Associates shall not proceed with any planning service tasks until written approval to proceed has been provided by the Town of Ulysses in the form of a Board resolution outlining the specific tasks and the primary contract person.

Hourly Rate Table for the Town of Ulysses Time and Materials Planning Efforts

Staff Level Hourly Rate

Principal-in-Charge \$150.00

Project Manager \$95.00

Senior Professional \$85.00

Professional \$75.00

Technician \$65.00

Additional Reimbursable Expenses will be billed to the Town according to the following rates:

Mileage – \$0.50 per mile

Black and white copies - \$0.02 per page

Color copies - \$1.00 per page

Tolls – actual cost

Meals – actual cost (lunch not to exceed \$10, dinner not to exceed \$20 / per person)

RE: Contract Extension – Farmland Protection Plan

The following services will constitute the extent of additional services for the Town of Ulysses Farmland Protection Plan. The provisions set forth in the master contract executed by the Town on July 16, 2008 shall cover this additional services contract. Our services will include:

- Attendance at one (1) Steering Committee Meeting in June 2010
- Attendance and facilitation of one (1) Public Workshop
- Review of Steering Committee revisions to Section 4.0
- Prepare written comments on Section 4.0
- Develop final recommendations and implementation section based on revised Section 4.0
- Finalize mapping
- Prepare consolidated draft Farmland Protection Plan
- Make one (1) set of final revisions after Public Workshop and Town Board review
- Provide Town with ten (10) color, hard copies of final Draft and Final plan

The lump sum amount for these services is \$3,500 and shall be completed by January 2011. Any tasks not detailed above that are requested of Bergmann Associates will be billed on a time and materials basis, at a rate of \$80/hour, upon approval by the Town of Ulysses. Billing for these services will be incorporated directly into the Farmland Protection Plan invoicing. Final payment not to exceed 10% of the total contract value being withheld until the Farmland Protection Plan is accepted by the Town Board of Ulysses, Tompkins County Agricultural Farmland and Protection Board and the NYS Department of Agricultural and Markets. Please sign below to direct Bergmann Associates to execute these services. Please return one original copy to my attention.

I authorize Bergmann Associates to complete the services outlined above.

Ms. Marino moved, seconded by Ms. Tyler to approve the above contracts as amended.

Ms. Marino aye

Ms. Tyler aye

Ms. Thomas aye

Mr. Kerness aye

Adopted

Request for Web Site Quotation

Ms. Marino submitted a “Request for Quotation” form that she and Ms. Poelvoorde have structured requesting a Web designer to re-design the page structure and layout which is asking for professional assistance to write the content for the multiple pull-down menu pages needed for the new web site.

The Board reviewed the request form and Ms. Poelvoorde will take care of mailing it out and asking for a quote to be returned by June 7, 2010 for the Board’s review at the June 8th Regular

Board meeting.
Approval of Letter to Town of Ithaca

Ms. Marino emailed a draft of the letter to the Town of Ithaca (Herb Engman) to go with the draft Agreement for Water Sales outside WD#3 customers. Ms. Marino also had the attorney review the letter and she felt fine with it. Letter to follow:

Dear Herb,

I am writing on behalf of the Town of Ulysses to confirm the oral agreement between former Supervisor Doug Austic and Ithaca Town Engineer Dan Walker, that the sale of water from the line-end hydrants in the Town of Ulysses Water District #3 to users outside the district is allowable. Mr. Walker and Mr. Austic previously agreed that such sale of water to outside users was an appropriate and economical means of maintaining chlorine residuals in the terminal areas of the WD#3 distribution system. The Town of Ulysses has been selling metered water from a line-end hydrant (primarily to a local water hauler for third-party resale) as per the above agreement for several years.

The Water Service Agreement between the Town of Ithaca and the Town of Ulysses (October 30th, 2003) which outlines the terms by which Ithaca agrees to sell and furnish water to Ulysses for Water District #3, requires in clause 16 (J) that Ithaca and the SCLWC approve the terms of any resale of Ulysses supply of water to third party customers outside the bounds of WD#3 in writing. Thus, the Town of Ulysses is hereby requesting that the previous oral agreement with the Town of Ithaca to allow such water resale be continued, and confirmed in writing according to mutually agreeable terms.

The Ulysses Town Board has drafted a Water Sale Agreement to be used by the Town of Ulysses and any outside-district customer specifying the conditions of water sale, in the event that the Town of Ithaca approves in writing this request to allow resale of water from the SCLWC facilities to third party customers outside the bounds of Ulysses WD#3. I am enclosing the draft agreement for review and comment by the Town of Ithaca.

Please let me know if you need any more information, and I will look forward to hearing from you soon.

The Town Board was okay with this letter and directed Ms. Marino to go forward.

Minutes of April 13 RTB Meeting

Ms. Thomas moved, seconded by Ms. Tyler the following:

BE IT RESOLVED that the Town Board of the Town of Ulysses approve the minutes as edited by Ms. Tyler and Ms. Marino for the Regular Town Board meeting of April 13, 2010.

Ms. Marino aye

Ms. Tyler aye

Ms. Thomas aye

Mr. Kerness aye

Adopted

Mr. Kerness announced that he has a meeting with the Justice Office on June 7th, 2010 at 5 pm to discuss court security with both of the Judges. There are no issues at this time. The Court Office has received a report from the State Authority that tells the court what they should be doing for security.

Ms. Thomas reported that she had sent out an email from the Youth Commission in reference to "Sticker Shock" which is a sticker they are going to place at the local stores making people aware of underage drinking.

Ms. Marino did a re-cap of the resolutions that were previously adopted by the Town Board for Mr. Romer who just arrived.

Ms. Marino had distributed and reviewed a list of items that she feels the Board needs to work on and her objective was to set some timelines for these tasks.

The Board discussed these items and also listed some other critical tasks that need to be worked on such as critical environmental areas and personnel.

The Board is going to review the list in more detail and see which items they would like to tackle.

Ms. Georgia asked for a minute of the Boards time to discuss the issues that she, Ms. Marino and Scott Heyman (mediator between Ms. Georgia and the Town Board, represented by Ms. Marino) have been discussing. At the last meeting with Scott a list of additional duties was presented that Ms. Marino had drafted, within a letter of agreement that Mr. Heyman had written up for Ms. Marino and Ms. Georgia to consider signing. Ms. Georgia at that time refused to sign the letter and again requested a full Board meeting to discuss this.

Ms. Georgia felt that the list of additional duties was very vague on many things and did not list anything in particular that the Board or the Supervisor wanted done.

Ms. Georgia emailed the list of duties to the NYS Association of Towns attorney and they responded. Ms. Georgia distributed these responses to the Board along with a very detailed list of what does take place in her office on a daily basis.

Ms. Georgia gave her reasons why she will not sit down with Ms. Marino one to one and why she was now requesting a meeting of the full Board.

Ms. Marino said that her list was totally drawn up from the job description book assembled for the Board by Ms. Georgia.

Ms. Georgia said it may have been but the Board has never adopted those job descriptions.

Mr. Kerness asked for the meeting to be adjourned because he felt that if the meeting was going to continue this discussion should be in executive session

Ms. Georgia said she was very happy to discuss it in an open meeting.

The Board set a tentative meeting date for June 7th at 4 PM to discuss this topic.

Hearing no further business Ms. Marino moved to adjourn, seconded by Ms. Thomas.
Meeting adjourned at 8:01 pm.

Respectfully submitted,
Marsha L. Georgia