

Town of Ulysses  
Regular Town Board Meeting  
October 12, 2010

Present: Supervisor Roxanne Marino; Councilpersons Elizabeth Thomas, Lucia Tyler, David Kerness, and Kevin Romer; Deputy Supervisor Sue Poelvoorde; Highway Superintendent James Meeker; Town Clerk Marsha Georgia and Attorney Mariette Geldenhuis.

Others Present: Diane Hillman and Justice Thomas Schlee.

Supervisor Marino called the meeting to order at 7:30 P.M. and had a moment of silence.

APPROVAL OF CLAIMS

Ms. Marino moved, seconded by Ms. Thomas the following resolution:

BE IT RESOLVED that the Town Board of the Town of Ulysses approve the previous examined vouchers #398 through 435 in the amount of \$21,081.86.

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

Adopted

APPROVAL OF MINUTES

Ms. Marino moved, seconded by Ms. Thomas the following resolution:

BE IT RESOLVED that the Town Board of the Town of Ulysses approve the Regular Town Board minutes of July 13, 2010, August 18, 2010 and September 14, 2010 and the Special Town Board minutes of June 23, 2010, July 29, 2010 and August 31, 2010.

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

Adopted

PRIVILEGE OF THE FLOOR - No one chose to speak.

REPORTS OF REPRESENTATIVES

Tompkins County: Jim Denise, Board and/or Sheriff Department – Neither in attendance.

Trumansburg Fire Department and EMS

Mr. Romer had a report from Chief Fulton and he reviewed it with the Board.

Trumansburg Village – No one in attendance.

## TOWN REPORTS

Highway Superintendent James Meeker reported on the activities of the department for the month of September.

Town Clerk Marsha Georgia reported the amount of Clerk fees for September. Ms. Georgia also noted that she finished the re-levies of arrear water accounts to go to Tompkins County Assessment to be added to the tax role and also the new list of total units to be charged on the tax bills for the water users.

Ms. Georgia also reported on the meeting she and Mary Bouchard had with Megan Krebs of Excellus Blue Cross/Blue Shield about a supplement health insurance for retirees on Medicare and also another health plan for employees that could save the Town money. After meeting with Excellus, Ms. Georgia found out from Ms. Tyler that due to the Town joining the consortium the Town can not at this time change plans. Ms. Marino reported that many of the Health Consortium municipalities are very interested in an option for health insurance for retirees and this will be actively negotiated in 2011 with Excellus.

Code Enforcement Officer Alex Rachun- Absent

Planning Board – Mr. Kerness reported that the Planning Board is in the process of reviewing the Racker Center addition and they are still looking at the maps for the Conservation Zone.

Agriculture and Farmland Protection Plan

Ms. Poelvoorde said the committee is having a Public Informational meeting on October 21, 2010, from 7:00 P.M. through 9:00 P.M. at the Village Fire Hall.

Supervisor Marino had received an email from Ken Zeserson and gave a brief report of the activities of the Citizens Advisory Committee on Gas Drilling and there meetings with CEDC.

Ms. Marino noted that several budget modifications need to be made to the 2010 budget. Ms. Marino moved, seconded by Mr. Kerness the following resolution:

BE IT RESOLVED that the Town Board of the Town of Ulysses approve the following budget modifications:

- Increase A1920.4 Municipal Dues by \$1100.
- Decrease A1910.4 Unallocated Insurance \$1100.
- Increase A9905.8 Disability Insurance 103.

- Decrease A1640.4 Central Garage 103.
- Increase SW8340.2 Trans. /Distribution EQ 100.
- Decrease SW8340.4 Trans. /Distribution CE 100.
- 

Ms. Marino aye

Ms. Thomas aye

Ms. Tyler aye

Mr. Kerness aye

Mr. Romer aye

Adopted

Ms. Marino distributed the operating statement and copies of the tentative budget with the changes made after the last meeting and reviewed the upcoming meetings.

Ms. Marino attended a meeting on the Black Diamond Trail in reference to area Highway Departments helping State Parks construct the trail. Ms. Marino summarized this for the Board. Ms. Marino discussed the list of requests for aid from Ulysses in the form of labor to install culverts across some of the roads in the Town with Mr. Meeker. State Parks has the materials; Mr. Meeker agreed to pursue the details with Jeff McDonald at State Parks, and put the requested Glenwood road culvert at highest priority for this fall as time allows. The Board talked in general about the trail.

Ms. Marino said that there is a group of Tompkins County Coalition of Governments (TCCOG) representatives meeting on October 14, 2010, to discuss the Youth Programs and the possible cuts from the County Budget. The group will explore strategies with Towns partnering up for services.

The Board is in receipt of the budget for the 2010 Winter Fest and also a request from Tammy Morse, Village Clerk for additional contributions for the festival. Ms. Marino suggested putting this aside for tonight and addressing it at the October 13, 2010, Budget meeting.

Town Board Members and Committees

Ms. Thomas reported:

- Web Site - worked with Ms. Georgia explaining the procedure to add to the web page
- Gas Drilling – new hire for TCCOG started today; working on mapping so towns could see what it would look like with drilling in their area
- Working on updating TCCOG web site on gas drilling
- Jay Franklin of TC Assessment working on assessment issues and land values related to gas drilling
- There will be tour bus going to Bradford County in PA
- Yates Co. resolution to protect watersheds in the Finger Lakes region
- Task Force meeting on 10/21 report on Regional meeting held at Penn State on gas drilling
- Attended a meeting on a survey of PA & NY landowners and how they feel about drilling and what it is doing to their communities

- Resolutions presented by Don Barber to go to the NYS Association of Towns Meeting in 2011
- TCCOG discussing having municipalities put in small amounts to create a small pot of working money and it was suggested \$250 annually

## OLD BUSINESS

### Dog Enumeration Contract and Pamphlets

The Board reviewed the contract presented by Ms. Geldenhuys and makes a few modifications.

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

BE IT RESOLVED that the Town Board of the Town of Ulysses adopt the contract as amended and move forward to hire a Dog Enumerator as an independent contractor. Contract follows:

### AGREEMENT WITH INDEPENDENT CONTRACTOR FOR SERVICES DOG ENUMERATION

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2010 between the TOWN OF ULYSSES with offices at \_\_\_ Elm Street, Trumansburg, New York 14867 (hereinafter referred to as the "Town") and \_\_\_\_\_ whose mailing address is \_\_\_\_\_ (hereinafter referred to as the "Contractor").

The Town and Contractor agree as follows:

1. Services to be Performed. Contractor agrees to perform the following services for the Town and/or to provide the following products to the Town: Contractor will conduct a door-to-door dog enumeration by visiting each household in the Town (including the Village of Trumansburg) that does not have a licensed dog or dogs on record to observe if a dog is harbored there or if there are signs or evidence of a dog being harbored there. Contractor will be provided a listing of the households on each road in the Town and shall return the lists to the Town Clerk with written remarks regarding each household visited. Contractor shall leave a Town-provided flyer at each household where no one answers the door and shall not revisit such households, unless specifically authorized by the Town Supervisor. The list of households will be divided into zones and the Contractor will complete one zone at a time. The Contractor will represent the Town in a professional manner, relaying information about the Town via flyers and other material that is provided by the Town. Contractor will be provided a safety T-shirt with the "Town of Ulysses" on the left front breast pocket to identify him as a Town contractor. Contractor will begin the enumeration within \_\_\_\_ days of the full execution of this Agreement, and Contractor shall complete the enumeration by \_\_\_\_\_.

2. Fees. The Contractor shall be paid \$2.00 per household visited to cover the costs for travel and time associated with services to the Town. Billing will be based on the number of households visited, which is based on the household listing provided to the Contractor and then returned to the Town by the Contractor. The Town has no obligation to utilize the services of or pay the Contractor for any minimum number of hours. Mileage will not be a reimbursable

expense. Contractor will not bill for any other disbursements, such as long distance telephone charges or meals.

3. Additional Fees. An additional \$1.00 will be paid for each new dog license issued by the Town from the first date Contractor visits households until 90 days after Contractor's last household visit. The Town will generate a list of new licenses on the 1st of each month during the applicable time period.

#### 4. Term of Agreement.

a. The term of this Agreement shall be from the date it is fully executed until \_\_\_\_\_, unless terminated earlier by either party.

b. Notwithstanding the term set forth above, this Agreement may be terminated by either party at any time without cause upon seven (7) days prior written notice to the other party, in which case the Contractor shall be paid pro rata for the satisfactory work performed to the date of termination.

c. This Agreement may be terminated immediately by either party upon the breach of any of its terms by the other party. Termination shall be effected by the breaching party's receipt of a written notice of termination setting forth the manner in which the party is in default

d. In the event of the Town's termination for Contractor's default, the Contractor will be paid only for services performed in accordance with this Agreement. If it is later determined by the Town that the Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other events which are not the fault of or are beyond the control of Contractor, the Town may allow the Contractor to continue work, or treat the termination as a termination without cause.

#### 5. Payment for Services.

a. Payment for services shall be submitted on the standard Town voucher which will list the number of households visited, as set forth in paragraph 2 above.

b. The vouchers shall be submitted monthly covering services for the preceding month. The Town Board will review same and, if acceptable, pay for the services after submission of the vouchers to the Town Board and approval of same by the Board in compliance with the Town Board's statutory duties to audit claims for payment. The Town Clerk will submit a monthly voucher to the Town Board so it can audit the claim for the additional fees earned for new licenses issued.

6. Relationship. The Contractor is, for all purposes (including, without limitation, withholding of income tax, payment of workman's compensation, and payment of FICA taxes) an independent contractor and no employer-employee relationship is intended, implied or created by this Agreement. Contractor shall determine the times and manner of performance of any services for the Town hereunder consistent with the overall obligations to complete the work contemplated

by this Agreement. Contractor shall be free to devote such portions of his time not required for the performance of services to the Town in such manner as Contractor sees fit and for such other persons, firms, or entities as Contractor deems advisable, provided that such other services do not constitute a conflict of interest with the interests of the Town.

7. Ownership of Products of Service. All work products of any services to be performed hereunder shall be the property of the Town, and the Town is vested with all rights therein, including the right to use, duplicate, distribute, share or sell such materials, without any further compensation of any nature to Contractor.

8. Insurance Requirement. Throughout the term of this Agreement, Contractor will be required to provide proof of general commercial liability insurance coverage in an amount of no less than \$1, 000, 000, listing the Town of Ulysses as an additional insurance. Contractor will not be covered under the Town's general commercial liability insurance coverage.

9. Workers Compensation and Disability Insurance. Upon execution of this Agreement, the Contractor shall present to the Town proof either that the Contractor provides the levels of workers' compensation and disability coverage required by the State of New York or that the Contractor is not required to provide such coverage.

10. Indemnity. The Contractor agrees to defend, indemnify and hold harmless the Town, its elected officials, public officers, employees, and agents from and against all losses or claims, and costs incidental thereto (including costs of defense, settlement and reasonable attorney's fees) which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment, caused by the acts or omissions of Contractor or Contractor's employees, agents or subcontractors, with respect to this Agreement. To the extent the Town is negligent; Contractor's indemnification shall not extend to the proportion of loss attributable to the Town's negligence.

11. Contractor May Not Assign. This Agreement may not be assigned by the Contractor without the previous written consent to such assignment from the Town, which consent may be withheld entirely at the discretion of the Town, it being understood that the Town is making this Agreement personally with the Contractor and is not intending that it be performed by any other person or entity.

12. Binding Nature of Agreement. This Agreement is binding upon the parties, their respective representatives and successors and, when assignment is permitted, assigns.

13. Governing Law, Jurisdiction, and Enforcement. This Agreement is made in New York, and shall be construed under the laws of the State of New York without regard to, or the application of, New York State's choice of law provisions. Both parties consent that if any action is brought to enforce this Agreement, it shall be brought in an appropriate Court in Tompkins County, New York, and both parties consent to the jurisdiction of such court.

14. Notices. Any notices or other communications given under or in relation to this Agreement shall be deemed duly given if served personally or by commercial courier service upon the other party at the address set forth above, or, if the mails are operating, mailed by certified mail to the other party at the address set forth above, return receipt requested. All notices shall be effective upon the date of receipt. Either party may change the address to which notices are sent by giving notice of such change in the manner set forth above to the other party.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior written or oral agreements, negotiations or understandings, existing between the parties. This Agreement may be amended only by written instrument signed by each party.

16. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Contractor and the Town shall survive the completion of services hereunder and the termination of this Agreement.

17. Claims and Disputes Arbitration. The Town may elect to subject disputes arising out of this Agreement to resolution by mediation or arbitration or litigation. This election can be made at any time up until sixty (60) days after the claim or dispute arises in writing. If the Town does not make an election, the dispute shall be subject only to litigation. Unless otherwise agreed by the parties at the time of such election, the rules governing mediation or arbitration invoked by the Town shall be the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Contractor hereby waives the right to elect the method of dispute resolution and agrees that this waiver is supported by sufficient and appropriate consideration.

18. Severability. If any provision of this Agreement is deemed to be invalid or inoperative for any reason, that part may be modified by the parties to the extent necessary to make it valid and operative, or if it cannot be so modified, then it shall be deemed severed, and the remainder of this Agreement shall continue in full force and effect as if this Agreement had been signed with the invalid portion so modified or eliminated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

TOWN OF ULYSSES

By:      Date: \_\_\_\_\_  
          Roxanne Marino, Town Supervisor

CONTRACTOR

Ms. Marino   aye  
Ms. Thomas   aye  
Ms. Tyler   aye

Mr. Kerness aye  
Mr. Romer aye

Adopted

The Board reviewed the card to be mailed before the enumeration starts, the pamphlet to be left by the enumerator and the information sheets the enumerator will use to keep track of the houses she visits.

Ms. Thomas moved, seconded by Mr. Kerness the following;

BE IT RESOLVED that the Town Board of the Town of Ulysses moves to approve the materials developed by Marsha Georgia and Liz Thomas for the dog enumeration process including the notification postcard to send to residents without a licensed dog, door drop flyer with licensing info, and enumerator form.

FURTHER RESOLVE to allow Ms. Marino, Ms. Thomas and Ms. Georgia to discuss and agree to contract with one of the potential enumerators who has expressed interest in the town's dog enumeration work.

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

Adopted

EMS Service Option

Mr. Romer presented to the Board an option he is looking into on EMS Service where it would be independent from the Village of Trumansburg. Mr. Romer had different scenarios and costs.

The Board discussed and commented; also Ms. Geldenhuys commented and asked questions. The Board needs to discuss this further at another time and further discuss this with the Village.

Water Penalty Waiver Requests

The Town received a couple of requests from water customers asking the Town to waive the penalties from there bill because they felt they had not received a bill. In the Town's 2003 Local Water Law there is no appeal or waiver process. The Board discussed this and asked Ms. Geldenhuys her opinion.

Ms. Geldenhuys said that water bills are treated like tax bills and there are very strict rules about not being able to waive penalties. Ms. Geldenhuys will help draft a letter to the residents requesting a waiver stating the laws the Town needs to follow.

## NEW BUSINESS

### Resolution to Submit JCAP Grant

Justice Thomas Schlee gave a presentation to the Board on a list of items that he would like to put in a grant to JCAP to implement the court security recommended after an audit by the State. Justice Schlee also reviewed the audit by NYS Court Association on security for the Town Hall, Courtroom and Court Office.

Ms. Marino moved, seconded by Mr. Kerness the following:

BE IT RESOLVED that the Town Board of the Town of Ulysses approves Justice Schlee's request to submit a grant application to JCAP for the 2010/2011 grant.

Ms. Marino aye

Ms. Thomas aye

Ms. Tyler aye

Mr. Kerness aye

Mr. Romer aye

Adopted

### Ms. Thomas Request for Resolution

Mr. Barber, Town of Caroline Supervisor has requested to add two resolutions to the business meeting of the Association of Towns business meeting in February. His resolutions are a formal request to Albany from the Association of Towns to allow towns more latitude in home rule as it pertains to gas drilling particularly in the areas of public safety, road protection, and land use. Resolutions were provided to the Board.

Ms. Thomas moved, seconded by Mr. Kerness the following:

BE IT RESOLVED that the Town Board of the Town of Ulysses supports the following resolutions submitted by Don Barber, Supervisor Town of Caroline and requests that resolutions #10 titled Preserve Town Land Use Authority in the Natural Gas Exploration and Extraction Approval Process & #12 Road Preservation Bonds and Road Use Agreements be added to the list of resolutions voted on at the Association of Towns annual business meeting in February 2011.

BE IT FURTHER RESOLVED that this resolution be certified and sent to Mr. Barber and the Association of Towns.

Ms. Marino aye

Ms. Thomas aye

Ms. Tyler aye

Mr. Kerness aye  
Mr. Romer aye

Adopted

Executive Session

Ms. Marino moved to go into executive session to discuss matters related to the appointment, promotion, demotion, discipline, or removal of particular personnel. Mr. Tyler seconded the motion.

Ms. Marino aye  
Ms. Thomas aye  
Mr. Kerness aye  
Mr. Romer aye

Adopted

The Board invited Ms. Georgia, Attorney Geldenhuys and Deputy Supervisor Sue Poelvoorde to join them.

The Board adjourned to executive session at 10:20 AM.

Hearing no further business Ms. Marino moved, seconded by Ms. Tyler to adjourn the meeting. Meeting adjourned after 11:00 P.M..

Respectfully submitted,

Marsha L. Georgia  
Ulysses Town Clerk

MLG: mlg