

Village Board of Trustees
Meeting minutes of June 16th, 2008

Present: Mayor Larry Gurrslin
Trustees Gates, Speer & Lee
Clerk-Treasurer, Janet Surridge
Superintendent of Public Works, Tom Tilebein
Deputy Clerk Shari Pearce

***** Trustee Horylev participated by telephone for the public forum section of this meeting

Guests: Larry & Kay Britt, 172 South Ave
John & Bobbie Corzine, 130 Gorton Ave
John Chart, 969 Hilton Parma Corners Rd
Harry & Dolores Bostley, 250 Hill Rd
Dave McCracken, 37 Timberwood Dr
Dave Wright, 173 South Ave
Richard & Donna LaForce, 350 South Ave
Leonard Parzynski, 63 Leith Lane
Roger Williams, 613 Burritt Rd
Robert Goodwin, 181 Hill Rd
Nick Coffee, 309 Cedar Terrace
Don Stilson, 604 Burritt Rd
Don Smith, 83 Hill Rd
Bill Carter, 28 Tallwood Dr
Lydia McPhall, 508 Burritt Rd
Joseph Sciortino
Villager Attorney, Larry Schwind
Fire Commissioners John Lemcke and Mike McHenry joined the meeting at 6:30 pm

The meeting was called to order at 5:00 pm. followed by the pledge to the flag.

Extending Sanitary Sewers into the Town of Parma:

Mayor Gurrslin gave his opening remarks and briefly explained the request that the Village Board is considering about extending our sanitary sewer system into the Town of Parma for a proposed subdivision to be called North Parma Station. Afterwards, he read this e-mail that he sent to Supervisor Rick Lemcke on June 3rd: "Dear Rick. Unfortunately, due to previous commitments, I will be unable to attend your 6:30 pm informational meeting on the proposed Senior Citizen District. I wish to inform you of my position as Mayor on two subject matters. The first is that of the town creating a senior district. I wholeheartedly support this initiative and I believe it is in the best interest of the town residents. Secondly, I am personally opposed at this time to the extension of the village sewers outside of the Village of Hilton limits. My purpose of mentioning it at this time is due to the fact of Hilton Parma residents contacting me for my viewpoint. At this time, I do not see of any benefit to the Village of Hilton for such extended service. I also wish to inform you that I attended a meeting with Mr John Chart this morning at his request and I understand his concerns." Mayor Gurrslin then read the response that he received from Supervisor Lemcke on June 4th: "Dear Mayor: Quite honestly, your e-mail comes at no surprise to me. It's obvious that your agenda is a lot different from other elected officials in both the Village and the Town. Mr Chart made mention of his connection with you at last night's meeting. He, too, wears his personal agenda on his sleeve. It's amazing how time has a tendency to change someone. Can you remember back to the annexation of the Town property by the Village for Unionville? The process will continue with or without your support."

Public forum:

John Chart: He stated that a survey should be done to establish what it's going to cost to extend the sewer system. There is no guarantee that the developer of North Parma Station is going to pay for the costs to expand. Does this mean that taxpayers will be burdened with the costs? That isn't the right thing to do. He also mentioned that easements will be required from adjacent property owners in order for the sewer mains to be installed. What happens if those easements are not granted? The people who live on South Ave/Rt #259 now are already annoyed about traffic and this proposal is only going to make it worse. Mr Chart asked that the Board not vote on this matter until all these items are addressed.

Dave Wright: He attended the recent Town of Parma meeting and listened to the information about the creation of a new zoning law for senior housing. There are 40 parcels in the Town of Parma that would fit the criteria for senior housing and he is concerned on how far this could reach. If we allow Village sewers for North Parma Station, we'll have others asking for the same service later.

Bobbie Corzine: She asked several questions about the capacity of the village sewer system. Tom Tilebein answered her questions by briefly explaining the engineering study that was done in 1998 for Unionville Station. He stated that another engineering study would be needed before the Board could vote to extend the sewer system.

Nick Coffee: He is concerned about the inoperability of this proposal in that the Village and the Town will each have control of different maintenance issues. For example, the Town of Parma has demonstrated before that they will not plow sidewalks. Are they equipped to maintain sewers? Without annexation, which gives one government total control, the people who live in this new subdivision could be stuck in the middle over maintenance problems.

Bill Carter: He was around when our forefathers built the sewer system. Up until now, if a developer wanted sewers the property had to be annexed into the Village. Mr Carter is very proud of our sewer system, it's second to none in Monroe County. He urged the Board to consider annexation. If not, it should be up to the Town of Parma to provide and maintain the sewers. As an example, he asked the question "what if something hazardous gets put into the sewer system, who's responsibility is it to fix it?" Today we have full control of the sewer system and good equipment. If we are going to continue to maintain a quality system, we either do it all, or let the Town maintain the section that is not in the Village.

Don Smith: There are a lot of people who reside in the Town of Parma that would welcome the opportunity to have sanitary sewers. What is the process they would have to follow to join in on this? Mayor Gursslin said those people should address that request to the Town Board.

Lydia McPhall wanted to know how many new houses the Village sewer system can support before there is a capacity issue? Mr Tilebein stated he does not know the answer to this because the engineering study has not been conducted. Ms McPhall then asked if storm water is a concern? Mr Tilebein replied that storm water does not affect sanitary sewers. A discussion then took place on what would happen if the power goes out and the lift station fails. Mr Tilebein explained that this would be addressed in the engineering study.

John Chart provided some statistics that he gathered from the preliminary site plan proposed by Mr Sciortino. Based on the number of units (400-500 homes) and 4 commercial buildings proposed, he asked Mr Tilebein if this would double the capacity? Mr Tilebein was unable to answer this question but agreed it could be close.

Bob Goodwin questioned the zoning on the property? Mr Chart said it's rural residential, low density which requires 2.5 acres per house.

Mayor Gursslin closed the public forum at 5:40 pm and then asked the Board members for comments.

Trustee Speer emphasized that two things have to work together to make this proposal work - 1) re-zoning and 2) sanitary sewers. Joe Sciortino is following the right process to get both of these issues addressed. Right now, neither the Village or Town Board is in a position to make any decisions but hopefully answers can be forthcoming soon. The other Board members concurred with what Trustee Speer said.

Mayor Gursslin asked Attorney Schwind this question: "If the Village were to proceed, what advice would you give to the Board?" Attorney Schwind responded that the Board should first determine the benefit to the Village of Hilton to grant permission to use the sewer system. Examples of the benefits could be that the Village Board welcomes another senior development, or that the revenue earned from a Town Sewer District may defray some of the costs to improve our overall sanitary sewer system.

Mayor Gursslin asked "if the Village Board allowed the sewers to be extended, who has the authority to take that sewer and extend it even further beyond that point?" Attorney Schwind replied the sewer mains would still be owned by the Village. The Town of Parma would have to get permission from the Village.

Mayor Gursslin: Could we stipulate that our sanitary sewers can only be used for residential housing units and not for commercial purposes? Attorney Schwind said the first step is the Town must decide what they want the sewer system for and then that is what the Village studies and either approves or disapproves, so the answer to this question is yes. If the Village Board says "no" to the Town's request, that doesn't stop the Town from starting their own sewer district and getting someone else to support it.

Mayor Gursslin: If the Village were to receive other requests from Town residents and/or developers to connect into our sanitary sewer system, and the capacity is there, could the Village deny those requests? Attorney Schwind said it would depend on several circumstances. If there is a legitimate village reason to turn it down, it could be denied, however he reemphasized that the Village Board needs to decide first what benefit and/or purpose there is to the Village to make an approval.

John Chart & Larry Schwind had some dialog about easement questions. Attorney Schwind said that sitting around a table and saying this looks like a good idea does not constitute an official vote. Nothing can happen without the Town of Parma creating a sewer district and the Village Board entering into an intermunicipal agreement with the Town to support.

This agenda item concluded at 6:05 pm The Board took a 15 minute recess.

Community Center

Trustee Speer mentioned that the Board budgeted funds to install a hood and ventilation system for the stove used by Hilton Community Child Care. He questioned the delay in getting this work started. Mayor Gursslin stated that he had a dialog with the NYS Building Code's office recently hoping to learn that the work was not needed because it was "grandfathered" from the prior tenant. Unfortunately, it is not grandfathered and the State declared this a local matter. After a brief discussion, the Board accepted the recommendation from Code Enforcement Officer Mike Lissow that we will proceed with this work.

Employee Benefits

The Board reviewed a request from the Public Works employees that they be reimbursed for the use of their personal cell phones during work hours. A sum of \$5.00 per month was suggested. Discussion followed.

Resolution to amend Section 817 of the Employee Handbook, Group Cellular Service, by adding the following new benefit which shall read as follows: "The Village will reimburse any employee who uses his or her cell phone for work related communication at the rate of \$5.00 per month. Any reimbursement must first be approved by the Department head" Motion was made by Trustee Speer, seconded by Trustee Lee. Carried unanimously 4-0

10 Canning Street

Mr Tilebein said that about a year ago we began negotiations with the adjacent property owner to get a deed restriction on our property removed. This deed restriction forever binds the Village for as long as we own the property to share any costs for parking lot improvements with the property owner at #50 Canning Street. This matter has not been resolved yet and Mr Tilebein questioned if it's something the Board still wants to pursue? Since the Village is in the process of selling our property, the Board wants to wait until a buyer is found and then decide what to do.

AT&T lease

Mrs Surrige informed the Board that the Cingular/AT&T lease agreement for cellular communication devices on the water tower expired on August 31, 2007. The MCWA has been negotiating a renewal since then and they are finally ready to enter into a new lease. Discussion followed on the terms and conditions.

Resolution: Whereas the Village of Hilton is a signatory to the lease agreement between the MCWA and New Cingular Wireless PCS, LLC, and

Whereas, the MCWA is renewing said lease for an initial term of 5 years, commencing on September 1, 2007, with an option to renew for up to 5 additional 5 year terms,

Now, therefore, be it resolved that the Village of Hilton acknowledges and consents to the lease renewal and to share all rent collected evenly (50-50) with the MCWA. Motion was made by Trustee Speer, seconded by Trustee Gates. Carried unanimously 4-0

Street Lighting Maintenance

Mr Tilebein reported that he recently obtained quotes from two sources for this year's maintenance on our street lighting system. One quote was from Powers Construction, LLP and the second was from the Village of Spencerport.

Resolution to accept the quote from Power & Construction Group Inc dated June 12, 2008 to provide maintenance services on our street lighting system for a term commencing on the date of acceptance through December 31, 2009. Motion was made by Trustee Gates, seconded by Trustee Speer. Carried unanimously 4-0

Hilton Parma Fire District/FEMA project

Mrs Surrige presented the final draft of the Intermunicipal Agreement, which is needed to document why the Fire District and Village are paying bills on the other's behalf, and a copy of the proposed PURCHASE AND SALE CONTRACT to the Board for their review. She explained that as these documents were being prepared, a financial concern arose for both the Village and the Fire District. The Fire District needs to receive the sum of \$552,000 for the sale of their property, which is the appraised value. FEMA will pay 75% of that amount (\$414,000) which leaves a balance of \$138,000 which, according to the terms of the FEMA grant, must be paid by the Village. As everyone knows, FEMA awarded the grant to the Village of Hilton because the Fire District is not a municipality. The Village accepted the grant on the condition that it wouldn't cost our Village taxpayers any money. The dilemma that had to be solved is how the Village recovers its \$138,000. Mrs Surrige stated that the solution is to bill the Fire District for our labor and equipment costs to demolish the building, fill in the basement and other costs to make it an open space area. Previously, it was thought that the Village would provide the labor and equipment as "in kind" services. After a brief discussion, the Board agreed to the new terms and conditions.

Resolution to enter into the following two agreements with the Hilton Parma Fire District:

INTERMUNICIPAL AGREEMENT

This Agreement, made this 16th day of June, 2008 by and between the HILTON-PARMA FIRE DISTRICT, a municipal corporation having offices at 135 South Avenue, Hilton, New York 14468, (the "District"), and the VILLAGE OF HILTON, a municipal corporation having offices at 59 Henry Street, Hilton, New York 14468, (the "Village").

RECITALS:

WHEREAS, the parties have entered into or are contemplating entering into a Purchase and Sale Contract for the transfer of real property, commonly known as 135 South Avenue, Hilton New York, 14468 (the "Premises") from the District to the Village; and

WHEREAS, both the Village and the District having determined that it is in the best interests of both the District and the Village to transfer the Premises in accordance with the terms of said Purchase and Sale Contract; and

WHEREAS, a condition of said Purchase and Sale Contract is that the Village obtain a certain FEMA grant for the purchase of the Premises from the District, more particularly described as the Flood Mitigation Assistance Program Village of Hilton Acquisition/Demolition Project # FMA-PJ-02-NY-2007-002; and

WHEREAS, the terms and conditions of said grant require certain steps to be taken with respect to the Premises following closing; and

WHEREAS, in order to induce the Village to enter into said Purchase and Sale Contract and to facilitate the ability of the Village to obtain said grant, the parties wish to enter into a further Agreement with respect to the Premises following the sale and transfer thereof to the Village,

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein and for the other good and valuable consideration, the parties hereby agree as follows:

1) In contemplation of the transfer and following the transfer of the Premises to the Village, as contemplated, the Village has taken and shall take such steps, in a timely fashion, as are necessary and appropriate to comply with all of the terms, conditions and requirements of the FEMA grant with respect to the Premises, said terms and conditions which have been provided to both the Village and the District prior to the execution of this Agreement and a copy of which are annexed hereto and made a part hereof as Schedule A.

2) In accordance with the terms of the FEMA grant, the Village shall provide FEMA with proof of such compliance, in a timely fashion, and shall obtain such reimbursement from FEMA as is provided for by the grant. The Village shall be entitled to retain any and all such amounts received from FEMA as reimbursement.

3) The Village shall provide the District with billing invoices for all costs and expenses incurred in complying with the requirements of the FEMA grant, including but not limited to all labor costs, materials, services, fees, administrative costs and the like, whether incurred by the Village directly by utilizing its own personnel (at the rate of \$34.00 per hour for administrative costs and otherwise at the rates actually paid by the Village to its personnel), equipment (at rates as established by Monroe County rate schedules) and/or other resources (at the costs actually incurred by the Village), or incurred by the Village through outside suppliers or contractors.

4) The Village shall notify the District promptly of the receipt and the amount of any reimbursement received from FEMA for any and all costs incurred in complying with the requirements of the grant and, within sixty (60) days of receipt of said notification, the District shall reimburse the Village for all costs so incurred by the Village that have not been reimbursed by FEMA. Notwithstanding the foregoing, it is specifically agreed and understood that the District shall reimburse the Village a total amount of not less than \$135,000.00 for that portion of the costs and expenses as are incurred by the Village directly, as set forth in paragraph 3 above. The obligation of the District to reimburse the Village for any costs and expenses shall be subject to the Village, in advance of incurring such costs, obtaining written approval from the District for the Village to incur such costs, such approval which shall not be unreasonably withheld.

5) It is mutually and respectively agreed, understood and certified that the parties have each, with the knowledge and consent of the other, requested the law firm of LACY KATZEN LLP to assist in the preparation of this Agreement. Each of the parties have been fully advised of their right to be represented by independent legal counsel and each of the parties have nevertheless requested, consented to and agreed to LACY KATZEN LLP assisting both the

Buyer and the Seller in this regard. It is mutually and respectively acknowledged and agreed by the parties that the terms and conditions set forth in this Agreement have been determined solely by the parties hereto and have not been negotiated by or suggested to them by LACY KATZEN LLP. It is further mutually understood and agreed that, in the event either party or LACY KATZEN LLP should at any time perceive the existence of a conflict of interest, or a potential conflict of interest, LACY KATZEN LLP will withdraw as representative for all parties and each party shall be required to obtain independent legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement the date set forth above.

PURCHASE & SALE CONTRACT

This Agreement, made this 16th day of June, 2008 by and between the HILTON-PARMA FIRE DISTRICT, a municipal corporation having offices at 135 South Avenue, Hilton, New York 14468, (the "Seller"), and the VILLAGE OF HILTON, a municipal corporation having offices at 59 Henry Street, Hilton, New York 14468, (the "Buyer").

1. Property to be Conveyed. Seller agrees to sell and Buyer agrees to purchase all of Seller's right, title and interest in and to the following:

(a) Certain plots, pieces or parcels of land commonly known as 135 South Avenue in the Village of Hilton, County of Monroe, New York, and identified as Tax ID Number 32.05-006-026.12 (the "Premises");

(b) All buildings and improvements located on the Premises;

(c) All fixtures, furnishings, and other personal property, if any, belonging to the Seller which are attached to the Premises;

(d) With respect to the Premises, the conveyance will also include all right, title and interest of Seller, if any, in and to:

(i) strips and gores of land adjoining or abutting the Premises, if any;

(ii) any land lying in the bed of any street, road, avenue or alley, open or proposed, public or private, in front of, running through or adjoining the land, to the center line thereof, and any award made or to be made in lieu thereof, and in and to any unpaid award for damage by reason of a change in grade of any street;

(iii) any easement, privilege or right-of-way over, contiguous or adjoining the Premises, and all other easements, if any inuring to the benefit of the land or buildings or the fee owner thereof; and

(iv) the appurtenances and hereditaments belonging or in any way appertaining to the Premises.

2. Condition of the Premises. Except to the extent provided herein, Buyer will accept the Premises "as is" as of the date of this Agreement.

3. Purchase Price and Terms. Buyer agrees to pay to Seller as the total purchase price for the Premises the sum of \$552,000.00 payable by a delivery of cash, bank draft or certified check at time of closing.

4. Adjustments. There are no taxes due or paid on the Premises. Any charges or assessments, water, pure water and sewer charges, fuel oil and other utility charges, excluding any delinquent items, interest and/or penalties will be prorated and adjusted between the Seller and the Buyer as of the date of closing.

5. Title Documents and maps. At time of closing, Seller will tender to Buyer a warranty deed with lien covenant conveying good and marketable title warranting same to be free and clear of all liens and encumbrances except public utility easements, provided those easements do not encroach upon the improvements on the Premises, and restrictive covenants of record, provided that those covenants have not been violated. Said deed shall contain the terms, conditions and restrictions as set forth on the "Draft Deed" and "Exhibit A" which are attached hereto and made a part hereof. Seller will also execute and furnish such other documents as may be reasonably required to provide Buyer with good and marketable title as provided herein. Notwithstanding the foregoing, the Buyer agrees to take title subject to a 70' easement for ingress and egress along the northerly boundary of the Premises for access to the parcel adjacent to the Premises on the west, either presently in existence or to be granted prior to closing.

Seller agrees to furnish, at Seller's expense, promptly after execution of this Agreement by both parties, fully guaranteed tax, title, United States District Court searches, and

searches under the Uniform Commercial Code of records in the appropriate offices, dated or redated subsequent hereto, and a certified instrument survey, dated or redated subsequent hereto, prepared by a land surveyor duly licensed by the State of New York. The instrument survey will show the Premises and the location of all buildings, improvements, gasoline storage tanks and other structures and easements affecting the Premises. The instrument survey will be prepared in accordance with standards of the Monroe County Bar Association, as may be adopted from time to time, and of the Buyer's lender.

6. **Objections to Title.** In the event that Buyer raises an objection to Seller's title which, if valid, would render the title unmarketable, Seller shall use all reasonable efforts to remedy such objections, failing which Buyer may, at its option, terminate this Agreement upon 10 days prior written notice, unless Buyer is willing to accept insurable title rather than marketable title, and Seller secures a commitment for fee title insurance to insure marketability of title against the objections raised and at standard rates and for a face amount equal to the purchase price, and such title insurance is acceptable to the Buyer. Seller will pay the cost of any such fee title insurance.

7. **Possession.** Buyer will have possession and occupancy of the Premises from and after the time of closing, subject to the Seller having relocated to a new facility prior to closing.

8. **Costs.** Seller will be responsible for the cost of recording of the deed. Buyer will be responsible for the cost to file any report with or required by the State Board of Equalization.

9. **Closing.** The closing will occur on or before April 15, 2009 at the offices of LACY KATZEN. LLP, attorneys or such other time and place mutually agreed upon by the parties.

10. **Warranties and Representations of Seller.** The Seller warrants and represents to the Buyer as follows:

(a) **Authority.** Upon acceptance of this Agreement, Seller will have taken all action advisable, necessary and proper to authorize and approve the acceptance, execution and delivery of this Agreement and the performance of its terms. This Agreement, once accepted by both parties, will constitute a valid and legally binding obligation of the Seller enforceable against Seller in accordance with its terms.

(b) **Ownership.** The Seller is the only entity whose authorization and approval is necessary to the effectiveness of this Agreement and consummation of the transactions contemplated herein. No other individual, corporation, organization or entity owns or has an interest in the Premises.

(c) **Litigation.** There are no suits, actions, proceedings or other litigation or known investigations of or against the Seller, threatened or pending, which would affect title to or use of the Premises or which would affect or delay consummation of the transactions set forth herein.

(d) **Liabilities.** There are no outstanding liabilities or obligations of Seller of any nature, whether direct or indirect, absolute, contingent, accrued or otherwise, whether arising out of contract, tort, statute or otherwise, which would affect title to or use of the Premises or which would affect or delay consummation of the transactions set forth herein.

(e) **Title to Assets.** The Seller has good and marketable title to the Premises free and clear of all claims, liens, mortgages, security interests, or other encumbrances, except as otherwise expressly provided in this Agreement.

(f) **Use and Zoning of the Premises.** Seller makes no representations regarding compliance of the Premises with any restrictive covenants, zoning, building and/or other applicable orders, laws, rules and regulations of any federal, state, local or governmental body or authority relating to the current and intended use of the Premises.

(g) **Governmental Approval.** Except for the parties hereto, and subject to any consents required to satisfy the conditions set forth in paragraph 12 hereinafter, no consent of any governmental agency is required to consummate the transactions set forth herein.

(h) **Leases.** Seller represents that there are no leases affecting any portion of the Premises.

(i) **New Agreements.** Seller will not enter into any new tenancies, service agreements or contracts without first obtaining the prior written consent of the Buyer.

(j) **Information.** All information relating to the Premises, which has previously been disclosed to Buyer by Seller is true, complete and accurate in all material respects, contains no material omission, and fully and fairly represents the information contained therein.

(k) **Environmental.** To best of Seller's knowledge:

(it to) There are no environmental problems relating to the Premises including, but not limited to, the existence on or under the surface of the Premises of any hazardous waste or hazardous substance or any material of any substance, the presence of which violates any federal, state or local environmental or other laws or which require any special permit, equipment, process or technique for its removal.

(ii) The Premises contain underground gasoline storage tanks, but have not otherwise been used for the generation, treatment, transportation, handling, storage, dumping or disposal of any hazardous substance or hazardous waste as such terms are defined by federal, state or local law.

(iii) The Premises have not been used as a landfill.

(iv) The Premises are located within a flood plain.

(v) Seller does not know and has no reasonable grounds for knowing if there is any hazardous substance or hazardous waste located on any parcels of land adjacent to the Premises.

(l) Disclosure. The Seller does not know and has no reasonable grounds for knowing any state of facts which would affect the truth and accuracy of the warranties and representations contained herein. No warranty or representation and no statement contained in any certificate or other instrument delivered to the Buyer contains or will contain any untrue statement of material fact, or omits or will omit to state a material fact necessary to make them not misleading.

(m) Warranties and Representations at Time of Closing. All of the warranties and representations made by Seller in this Agreement and in any schedule, exhibit, certificate or instrument delivered to the Buyer will be true at the time of closing as though they were made at that time.

11. Access to Premises. At any time prior to closing, the Buyer, through its authorized representatives, will have full access to and the rights to inspect the Premises during normal business hours.

12. Conditions Precedent. This Agreement is subject to and conditioned on the Buyer obtaining any applicable municipal or agency approvals for the acquisition and intended use of the Premises and on the Buyer being entitled to and receiving, at or prior to closing, a FEMA grant for the purchase of the Premises, in an amount of not less than \$414,000.00. Buyer will take all steps as are reasonably necessary to secure said funds in a timely fashion and the Seller will cooperate with the Buyer's efforts to do so. It is expressly agreed and understood that the within condition precedent is for the benefit of both the Buyer and the Seller and neither party shall be entitled to waive such condition without the consent and agreement of the other party.

13. Risk of Loss and Condemnation.

(a) The risk of loss or damage to the Premises by fire or other causes until the delivery of the deed to the Buyer is assumed by Seller. Seller represents that it has no knowledge of any proceedings instituted by any municipal, state, or federal agency to condemn or acquire the Premises, or any portion of it, by eminent domain. If it is determined that any of such proceedings have been commenced or are threatened to be commenced, or if such casualty has occurred, Buyer may within 60 days after receiving written notice of such proceeding or casualty, notify Seller in writing of Buyer's election to either: (i) cancel this agreement, in which event, all rights and obligation of the parties shall cease and terminate, or (ii) accept delivery of the deed and take an assignment of any condemnation award or insurance proceeds received or to be received by Seller, less any reasonable expenses incurred by Seller in obtaining the award or insurance proceeds.

In the event Seller is informed of the initiation of any condemnation proceeding during the term of this Agreement, Seller agrees to promptly notify Buyer in writing, forward to Buyer photocopies of any and all maps and documents received in connection with the proceeding, and keep Buyer informed concerning the progress of such proceeding and any negotiations with the condemning authority.

14. Further Assurances. The parties will execute such documents and take such other action which may be necessary or desirable to consummate the transactions contemplated herein.

15. Indemnification. The Seller will indemnify and hold the Buyer harmless, at all times from and after the date of this Agreement and subsequent to the time of closing, from all

claims, damages, liabilities and expenses, including reasonable attorneys' fees, arising out of or in any way connected with the breach by the Seller or the falsity of any warranty, representation, term or condition contained herein, or any liabilities, claims, suits, actions, proceedings, litigation or investigations of any nature, arising in connection with the ownership of the Premises by the Seller prior to the time of closing.

16. **Broker's Commission.** The Buyer and the Seller each represent and warrant to the other that no broker brought about this transaction, and that no sales commissions or fees of any nature are due as a result of this Agreement and/or transfer of title to the Premises. The Buyer and the Seller shall indemnify and hold the other harmless from and against any claim by any broker claiming to have dealt with such party in connection with this transaction, including reasonable attorneys' fees incurred in the defense of such claim. The provisions of this paragraph shall survive the closing.

17. **Survival.** All warranties, representations and agreements made in this Agreement, or pursuant hereto, will survive the closing and any investigation at any time made by or on behalf of the Buyer.

18. **Notices.** All notices, requests, demands, consents or other communications which may be given or required to be given under the terms of this Agreement will be in writing and will be personally delivered, or sent by registered mail, or certified mail return receipt requested, to the Seller at: P.O. Box 187, Hilton, New York 14468, and to the Buyer at: 59 Henry Street, Hilton, New York 14468. Notice given by mail shall be deemed given five (5) business days after being deposited in a post office box in New York State, irrespective of the date of receipt.

19. **Termination.** In the event that this Agreement is not consummated because any contingency has not been met or waived, this Agreement will become null and void and neither party will have any claim against the other.

20. **Construction.** All understanding and agreements heretofore made by and between the parties are merged in this Agreement, which alone fully and completely expresses their agreement. However, nothing herein shall restrict or prohibit the parties from entering into any other or further agreements, in writing, as they may deem necessary or appropriate, in their sole discretion. This Agreement may not be changed, terminated, nor any of its provisions modified or waived, except in writing signed by the party against whom enforcement of the change, termination, modification or waiver is sought. This Agreement will be governed by and construed in accordance with the laws of the State of New York.

21. **Legal Representation.** It is mutually and respectively agreed, understood and certified that the parties have each, with the knowledge and consent of the other, requested the law firm of LACY KATZEN LLP to assist in the preparation of this Agreement and the closing of the transfer contemplated herein. Each of the parties have been fully advised of their right to be represented by independent legal counsel and each of the parties have nevertheless requested, consented to and agreed to LACY KATZEN LLP assisting both the Buyer and the Seller in this regard. It is mutually and respectively acknowledged and agreed by the parties that the terms and conditions set forth in this Agreement have been determined solely by the parties hereto and have not been negotiated by or suggested to them by LACY KATZEN LLP. It is further mutually understood and agreed that, in the event either party or LACY KATZEN LLP should at any time perceive the existence of a conflict of interest, or a potential conflict of interest, LACY KATZEN LLP will withdraw as representative for all parties and each party shall be required to obtain independent legal counsel.

22. **Waiver.** In the event that any term or condition of this Agreement should be breached by any party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach either prior to or subsequent to the breach so waived.

23. **Severability.** Every provision of this Agreement is intended to be severable. If any provision is held to be invalid or unenforceable by law or by a court of competent jurisdiction, all other provisions will nevertheless continue in full force and effect.

24. **Paragraph Headings.** The paragraph headings contained in this Agreement have been prepared for convenience of reference only and will not control, affect the meaning, or be taken as an interpretation of any provision of this Agreement.

25. **Assignment.** Neither party can assign its interest in this Agreement without the prior written consent of the other.

26. **Successors and Assigns.** This Agreement will apply to, be binding upon and inure to the benefit of the parties, their respective legal representatives, successors, assigns and permitted transferees.

Motion to approve these agreements was made by Trustee Speer, seconded by Trustee Gates.
Carried unanimously 4-0

Fire Commissioners John Lemcke and Mike McHenry joined the meeting at this time and presented a slide show to the Board that explained the FEMA project in great detail. This was done to help the Board understand the process.

Meeting adjourned at 8:00 p.m.

Janet Surridge
Clerk-Treasurer