

**HENRIETTA TOWN BOARD
AGENDA
FEBRUARY 18, 2009**

ORDER OF BUSINESS

1. Roll Call
2. Prayer
3. Pledge of Allegiance to the Flag
4. Public Presentation/Agenda Items
5. Approval of Minutes of the Preceding Meeting(s): February 4, 2009
6. Miscellaneous Communications
7. Public Hearing:
 - Proposed Rezoning of Land Located on the Southeast Corner of Jefferson Road and Marketplace Drive – Industrial to Commercial B-1
8. Introduction of and Action Upon Local Laws, Ordinances, Resolutions
9. Reports of Standing Committees and Actions Thereon
10. Reports of Special Committees
11. Public Comment
12. Adjournment

RESOLUTION #5-61/2009
Authorize Accounts Payable

RESOLUTION #5-62/2009
Appoint Members to Youth Board

RESOLUTION #5-63/2009
Call for Public Hearing - Proposed Establishment of Extension No. 203 (The Province) to Henrietta Sewer District No. 1

RESOLUTION #5-64/2009
Accept Dedication of Sanitary Sewers – Calkins Road Professional Business Park Subdivision – Kenneth Drive

RESOLUTION #5-65/2009
Declare Items Surplus Materials

RESOLUTION #5-66/2009
Authorize Non-Union Employee Eye and Dental Benefits

RESOLUTION #5-67/2009
Authorize Personnel Items

PURSUANT TO CALL A REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, WAS DULY HELD AT THE HENRIETTA TOWN HALL, 475 CALKINS ROAD, HENRIETTA, NEW YORK ON THE 18th DAY OF FEBRUARY, 2009 AT 8:00 P.M.

PRESENT

Supervisor Michael B. Yudelson
Councilwoman Catherine A. McCabe
Councilman William J. Mulligan, Jr.
Councilwoman Janet B. Zinck
Councilman John W. Moore
Daniel J. Mastrella, Town Attorney
Patricia J. Shaffer, Town Clerk

(SILENT PRAYER)

(PLEDGE OF ALLEGIANCE TO THE FLAG)

SUPERVISOR YUDELSON

Before we begin the Agenda, is there anybody who would like to speak on any items that are on the Agenda tonight, other than the Public Hearing on the Rezoning, Agenda items at this time?

JOHN SCHMITT, 139 CAMPFIRE ROAD NORTH

John Schmitt, 139 Campfire Road North. On the Agenda tonight, and that's what you're referring to is the Agenda, under Resolution #5-67/2009, there is a position being, with Mr. Terry Ekwel, it looks to me like a senior position, and I have three (3) questions about it. The first one is, is this a new position, or is somebody being replaced?

SUPERVISOR YUDELSON

This is replacing Jeff Wilkinson.

JOHN SCHMITT, 139 CAMPFIRE ROAD NORTH

I don't . . .

SUPERVISOR YUDELSON

It's currently a vacant position.

JOHN SCHMITT, 139 CAMPFIRE ROAD NORTH

I don't want the particulars, I just wondered if it's a replacement, my other two (2) questions are irrelevant.

SUPERVISOR YUDELSON

Yes, it's a replacement for a current vacant position.

JOHN SCHMITT, 139 CAMPFIRE ROAD NORTH

Thank you.

SUPERVISOR YUDELSON

Thank you. Is there anyone else who wants to speak on Agenda items, there will be an opportunity to speak on other matters at the end of the Agenda. Any Agenda items at this time? *(Pause, no response)* If not, can I have the Approval of the Minutes?

COUNCILWOMAN McCABE

Mr. Supervisor, I move we Approve the Minutes of February 4, 2009.

COUNCILMAN MOORE

Second.

SUPERVISOR YUDELSON

Discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelton	voting	Aye

Carried

SUPERVISOR YUDELSON

At this time we have a Public Hearing on the proposed Rezoning of land located on the southeast corner of Jefferson Road and Marketplace Drive from Industrial to Commercial B-1. Is there somebody here to represent the Applicant? If you'd come on up, identify yourselves for the Record, and tell us what you propose to do.

JAMES BOGLIOLI, ATTORNEY

Good evening. My name is James Boglioli, I'm an attorney with Benderson Development. With me I have Matt Oates, he's an Engineer from our company. As the Board was aware, we're requesting a Rezoning of approximately 12.57 acres of property located on the southeast corner of Jefferson Road and Marketplace. Matt will put the site plan up there. We've prepared a concept site plan, it's the former Standex building site, I know you're all familiar with it. We're proposing, as part of the concept plan, approximately one hundred and thirty thousand (130,000) of square feet of restaurant and retail, it will be similar to our development across the street. It's directly across from our other retail project, if you will note from the plan, *(away from mic, inaudible)* We understand that if the Town Board granted the Rezoning, we'd have to go to the Planning Board for full site plan approval. You may be asking yourself, in this retail

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market, why are we here asking for a Rezoning? We're planning for the future to begin with, and actually, we already have tenant interest for this site, with tenants that are not already in this Town. So, we have, if we were able to get the Rezoning, we'd be in pretty quickly for a site plan approval because we have interested tenants. We do believe that this Application is consistent with the zoning in the area and previous zoning that you granted for our property across the street. As you know, to the north is Market Square to the west bordering the property is the Red Lobster and the Regal Cinema across Marketplace Drive, to the south bordering the property is the Wal-mart and Sam's Club, and to the east bordering the property is an office building, and we think this would be a consistent use with that area. It's really a short presentation, with the Rezoning, we believe it's consistent, and if there's any questions, we'd be happy to answer them.

SUPERVISOR YUDELSON

Just for the Record, as far as perspective tenants, you kind of touched on it, but at least publicly right now, there's no *(inaudible)*

JAMES BOGLIOLI, ATTORNEY

That's correct. We can't release their names at this point. But for the Record, we do have interested tenants at this time.

COUNCILMAN MULLIGAN

Through you, Mr. Supervisor, the buildings that you currently own, do you have a, what's your vacancy rate here in Henrietta?

JAMES BOGLIOLI, ATTORNEY

Matt, would you know that one?

(Matt Oates, from audience, inaudible)

SUPERVISOR YUDELSON

Excuse me, let me stop you for one second. If you don't mind going up to the microphone, so that your comments are recorded.

MATT OATES, ENGINEER

Off the top of my head, I do not know what our vacancy rate is overall in the Town of Henrietta, we'd be more than happy to get that information provided back to the Board. For this specific area, our Marketplace Drive is across the street, we have approximately about thirty-five thousand (35,000) square feet left vacant of buildings that are currently built, the eastern portion of Home Depot is fully built down now with the Buy Buy Baby that just went in, and we only actually have, unfortunately, the Circuit City space will be coming back and then the one (1) vacant tenant space left there, and the vacant space next to Great Northern, actually we have the other tenant that's working with the Town, the Chipotle, there as well. In this region as well, we have very little vacancy left that is

currently built.

COUNCILMAN MULLIGAN

If you could get us like the total amount of space you have, and then compound that with, you know, what is currently occupied because you guys know better than anybody there is a lot of vacancy out there, and although I'm sure this is a viable rezoning, it's nice to see some of the vacant stuff filled, you know, prior to rezoning the land.

JAMES BOGLIOLI, ATTORNEY

We understand that *(inaudible)* We just see this as a *(inaudible)* Although the economy is bad now, we're looking for three (3), four (4) years down the road *(inaudible)* some of the store sizes here will be different than the stores across the street. *(Inaudible)*

COUNCILMAN MULLIGAN

Through you, Mr. Supervisor, on a related subject, the Itek property, which is a very large parcel, up there on the corner of Clay and Jefferson Road, and I believe the southwest corner, it was one time my understanding that Benderson was seriously looking at that for the future, do you know what the status of that is?

JAMES BOGLIOLI, ATTORNEY

I do not know the status, it's my understanding that we do not own that property as of now, but we can go back to our office and find out some more information about it and provide that to the Board.

COUNCILMAN MULLIGAN

Have you purchased any other properties recently, in addition to this one?

MATT OATES, ENGINEER

No, we have not.

COUNCILWOMAN ZINCK

Through you, Mr. Supervisor, is that how you are anticipating it to look?

MATT OATES, ENGINEER

Right now, that's a concept of how we're anticipating it to look.

COUNCILWOMAN ZINCK

Okay. So, similar to what you have across the street.

MATT OATES, ENGINEER

Similar across the street.

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COUNCILWOMAN McCABE

Through you, Mr. Supervisor, what is your build out time, when do you expect to start?

MATT OATES, ENGINEER

If we were to get approval we would be in for site plan on that one (1) potential tenant within a month, and as soon as we can get site plan approval we would definitely build at least part of the site plan right away on the hard corner.

COUNCILWOMAN McCABE

You would be hoping that this tenant would then move in, and the rest would be on speck, you would build maybe something small on speck and then as more tenants come in, you'd finish the build out?

JAMES BOGLIOLI, ATTORNEY

Yes, we'd probably build it out the same way we built the Market Square. We built out a portion of the approved building as the tenants were there and as the tenants came in built out the rest of it, but we would anticipate, hopefully, with the tenants we currently have we'll be able to hopefully start that late summer, early fall, and then that would allow for possibly early spring opening of next year as well, and then once they get that going, once we get the construction going it kind of helps to generate more interest once the tenants see what's going on there, then they start looking at it, and then we'll start working our way through the rest of the buildings, as well.

COUNCILWOMAN McCABE

Thank you.

COUNCILMAN MULLIGAN

Through you, Mr. Supervisor, on this particular site, I know you've done demolition, two (2) questions; was there any contamination and what's the status of the remedial action?

JAMES BOGLIOLI, ATTORNEY

There was contamination, it was completely remediated, there are monitoring walls there that we will monitor for the next three (3) months just to make sure all the, it was completely clean.

COUNCILMAN MULLIGAN

You did a Phase One (1) and a Phase Two (2)?

JAMES BOGLIOLI, ATTORNEY

Yes, and it was cleaned out, the site was cleaned out.

COUNCILMAN MULLIGAN

And, finally, where the Great Northern Pizza Kitchen is at one (1) time they were talking

about a Starbucks in there, is that your property?

COUNCILWOMAN ZINCK

It's the Chipotle.

JAMES BOGLIOLI, ATTORNEY

It's going to be a Chipotle, at this point, not a Starbucks.

COUNCILMAN MULLIGAN

What's that?

JAMES BOGLIOLI, ATTORNEY

That's a Mexican restaurant.

(Matt Oates, from audience, inaudible)

COUNCILMAN MULLIGAN

Yes, they used to be *(inaudible)*

SUPERVISOR YUDELSON

They are in Henrietta.

COUNCILWOMAN ZINCK

They're still here. How about the status of the Circuit City, any prospects?

JAMES BOGLIOLI, ATTORNEY

Too early to tell, at this point. We are marketing it, we don't like to see anything sit vacant, we're actively marketing it.

COUNCILWOMAN ZINCK

Thank you.

JAMES BOGLIOLI, ATTORNEY

You're welcome.

SUPERVISOR YUDELSON

Just, as you know, considering the Rezoning, the Town Board is looking at whether Commercial use of the property would be appropriate, and if the Rezoning was granted it would still, I mean, any project that came in, as you said you'd submit a site plan and go through the Planning Board process and if it was something, the type of use that required a Special Permit then you'd be back to the Town Board.

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JAMES BOGLIOLI, ATTORNEY
Yes, we understand that.

SUPERVISOR YUDELSON
(Inaudible)

JAMES BOGLIOLI, ATTORNEY
Not at this point.

SUPERVISOR YUDELSON
Thank you. Is there anybody in the audience who would like to speak on this Application? *(Pause, no response)* If not, I'll close this Public Hearing and the Board . . .

DANIEL MASTRELLA, TOWN ATTORNEY
Mr. Supervisor, might I just, if you're going to entertain further information from the Applicant that we haven't received yet, you should probably Continue the Public Hearing until you've got that information so that if anybody wanted *(inaudible)* Along those lines, it would be properly considered.

SUPERVISOR YUDELSON
So, we could do that at the meeting that we might consider . . .

DANIEL MASTRELLA, TOWN ATTORNEY
And, you certainly, that doesn't mean you can't act upon it at the next meeting, you could close and act at the next meeting if you chose to do so, but just to, since there's more information coming, it should probably stay open at this point.

SUPERVISOR YUDELSON
Let the Record show, that we will Continue, and most likely vote on it at one of our meetings in March.

(James Boglioli, from audience, inaudible)

COUNCILWOMAN ZINCK
Thank you.

SUPERVISOR YUDELSON
Can I have the first Resolution, please.

RESOLUTION #5-61/2009

On Motion of
Councilman Moore

Seconded by
Councilwoman McCabe

BE IT RESOLVED, that the Director of Finance be authorized to pay the following bills payable:

EXHIBIT A Bills Payable dated 2/18/2009 \$ 361,033.93

SUPERVISOR YUDELSON

Discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelson	voting	Aye

Carried

RESOLUTION #5-62/2009

On Motion of
Councilman Moore

Seconded by
Councilwoman Zinck

WHEREAS, there are vacancies on the Henrietta Youth Board, and
WHEREAS, four (4) applications have been received and reviewed for positions on this Board, and

WHEREAS, the Town Board wishes to keep the various Boards of the Town at their authorized strength for maximum input.

THEREFORE, BE IT RESOLVED, that Kelly Ford Ellingham, 21 Warder Drive, Pittsford, New York 14534; Maria Kopacki, 9 Clearview Drive, Pittsford, New York 14534; Suzanne MacFall, 45 Strawberry Hill Road, Rochester, New York 14623; and Nancy C. Scarborough, 47 Horseshoe Lane South, Henrietta, New York 14467, be hereby appointed to the Henrietta Youth Board for a two (2) year term to be effective immediately and expiring December 31, 2010.

SUPERVISOR YUDELSON

Discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelson	voting	Aye

Carried

RESOLUTION #5-63/2009

On Motion of
Councilwoman McCabe

Seconded by
Councilman Mulligan

IN THE MATTER OF THE PETITION FOR THE ESTABLISHMENT OF EXTENSION NO. 203 (THE PROVINCE) TO HENRIETTA SEWER DISTRICT NO. 1 LOCATED ON THE EAST SIDE OF JOHN STREET AND SOUTH OF JEFFERSON ROAD IN THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK.

WHEREAS, a written Petition in due form and containing the required signatures has been presented to and filed with the Town Board of the Town of Henrietta, County of Monroe, New York for the establishment of Extension No. 203 (The Province) to Henrietta Sewer District No. 1 bounded and described as set forth on exhibits now on file in the Town Clerk's Office, and

WHEREAS, the improvements proposed consist of a sewer system to serve the said Extension No. 203, including the acquisition of the necessary rights-of-way therefore, in accordance with a certain map and description made a part of such Petition and now on file in the Office of the Town Clerk of the said Town, and

WHEREAS, the maximum amount proposed to be expended for the said establishment of the said extension and the construction of said sewer system, including the acquisition of any necessary lands, easements and rights-of-way within and also outside of the limits of the proposed District Extension shall be borne by the owners and developers of the land included in said extension.

THEREFORE, BE IT RESOLVED, that a Public Hearing of the Town Board of the Town of Henrietta shall be held at the Henrietta Town Hall, 475 Calkins Road, in the Town of Henrietta, Monroe County, New York on the 4TH day of March, 2009 at 8:00 P.M. to consider the said Petition and to hear all persons interested in the subject. Notice of said Hearing shall be published and posted in the manner provided by law.

SUPERVISOR YUDELSON

Discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelson	voting	Aye

Carried

RESOLUTION #5-64/2009

On Motion of
Councilman Mulligan

Seconded by
Councilman Moore

WHEREAS, LeFrois Builders and Developers, the Developer of Calkins Road Professional Business Park Subdivision, Section 3, located on Kenneth Drive, has installed sanitary sewers in said subdivision section, and

WHEREAS, the Developer has offered to dedicate and relinquish ownership of the stated utility to the Town of Henrietta and for this purpose has delivered to the Town of Henrietta filing instruments granting easements to the Town for said sanitary sewer system, and

WHEREAS, the Town Attorney has examined these easements and has found them to be in good order, and

WHEREAS, the Superintendent of Drainage, Sewer, Sidewalks, Parks and Facilities and the Director of Engineering and Planning have determined that the said sanitary sewer system was installed in accordance with Town requirements and have recommended that they be accepted by the Town, and

WHEREAS, the standard required two (2) year period of time within which a Maintenance Bond would be required to be posted has elapsed, and

WHEREAS, the Director of Engineering and Planning and the Superintendent of Drainage, Sewer, Sidewalks, Parks and Facilities have re-inspected the improvements and recommend that they be accepted without requiring posting of said Bond.

THEREFORE, BE IT RESOLVED, that the said sanitary sewer system for the described subdivision section be and they hereby are accepted and that easements be recorded in the Monroe County Clerk's Office.

SUPERVISOR YUDELSON
Discussion?

COUNCILMAN MULLIGAN
Just under discussion, ninety-nine percent (99%) of the time we would have required a Bond on this, in this case we didn't because, why?

SUPERVISOR YUDELSON
That's a question that I would call Mr. Liess up for and since he is on vacation, Mr. Byrne will answer.

MARK BYRNE, DIRECTOR OF ENGINEERING/PLANNING
In my attached memo, the sewers were put in in 2005, so they've been around for four (4) years.

COUNCILMAN MULLIGAN

But, you didn't require the Bond, why?

MARK BYRNE, DIRECTOR OF ENGINEERING/PLANNING

Because everything is up to snuff, everything meets our Town standards.

COUNCILMAN MULLIGAN

But, normally there would have been a Bond?

MARK BYRNE, DIRECTOR OF ENGINEERING/PLANNING

Normally, if it was less than the time period, yes.

COUNCILMAN MULLIGAN

Okay, thank you.

SUPERVISOR YUDELSON

Thank you, Mark. Further discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelson	voting	Aye

Carried

RESOLUTION #5-65/2009

On Motion of
Councilwoman Zinck

Seconded by
Councilwoman McCabe

WHEREAS, the Director of Engineering and Planning has requested that the following item be declared surplus material:

<u>Inventory #</u>	<u>Description</u>
3749	17" Dell Monitor

WHEREAS, the Director of Finance has requested that the following item be declared surplus material:

<u>Inventory #</u>	<u>Description</u>
3241	Canon Copier 6551

WHEREAS, the Safety Officer has requested that the following item be declared surplus material:

<u>Inventory #</u>	<u>Description</u>
n/a	1997 Ford Ranger Pickup Truck, # 20

WHEREAS, the Henrietta Public Library Board of Trustees has requested that attached items be declared surplus materials.

THEREFORE, BE IT RESOLVED, that the item described above from the Engineering Department be declared surplus material and be sent to Maven Technologies, LLC, for disposal.

BE IT FURTHER RESOLVED, that the item described above from the Finance Department be declared surplus material and be sent to Toshiba Business Solutions, for disposal.

BE IT FURTHER RESOLVED, that the items described above from the Safety Officer and the Henrietta Public Library Board of Trustees be declared surplus materials and be sent to the Parks and Facilities Department for disposal.

SUPERVISOR YUDELSON

Discussion? Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelson	voting	Aye

Carried

RESOLUTION #5-66/2009

On Motion of
Councilman Mulligan

Seconded by
Councilman Moore

WHEREAS, the Town of Henrietta has received dental and eye care quotes from a Guardian Insurance Broker, Sagemark, 600 Clinton Square, Rochester, New York 14604, and

WHEREAS, these quotes are at a lower premium with similar or better benefits from the current provider.

THEREFORE, BE IT RESOLVED, that the Town of Henrietta will provide Guardian dental and eye care benefits to non-union employees, excluding Henrietta Public Library employees, effective April 1, 2009.

SUPERVISOR YUDELSON

Under discussion, even though Paul Liess isn't here tonight, I just want to thank him for pursuing things that will save the Town money, and at the same time provide better benefits to our employees, which this does. Our hope is that the Union, where their benefits are covered by the Contract, will consider this, and we're hoping that they might want to join on too, to give better benefits to the Union employees, and obviously,

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discuss it with the Library to see, at this point, if it would be a better situation for them. Further discussion?

COUNCILMAN MOORE

Mr. Supervisor, for the Record, why is it that the Library employees are not a part of this?

SUPERVISOR YUDELSON

The Library Board, under State Law, has the authority to set their benefits and make the choices that go along with that, and they currently have a different plan, we've asked them for details of their plan, and if Paul Liess wasn't on vacation we probably would have had that analyzed in time for this meeting, our hope is if their current plan isn't more cost effective or better for benefits, or better to their employees that they'll want to join on as well.

COUNCILMAN MOORE

And, the Town Board has no say over whether they can join it or not?

SUPERVISOR YUDELSON

(Inaudible)

COUNCILMAN MOORE

Thank you.

SUPERVISOR YUDELSON

You're welcome. Call the roll, please.

Duly put to a vote:

Councilwoman McCabe	voting	Aye
Councilman Mulligan	voting	Aye
Councilman Moore	voting	Aye
Councilwoman Zinck	voting	Aye
Supervisor Yudelton	voting	Aye

Carried

RESOLUTION #5-67/2009

On Motion of
Councilman Moore

Seconded by
Councilwoman Zinck

BE IT RESOLVED, that the following person be hired:

Terry Ekwel

Building/Code/Fire, Building Inspector/Fire
Marshal @ \$63,000/yr., effective 2/23/2009 (six

months provisional).

BE IT FURTHER RESOLVED, that the following employee changes be made:

David Oliver	Tinker Nature Center, Curator @ \$37,142/yr., from Curator @ \$36,060/yr., effective 1/1/2009.
Ken Stavalone	Building/Code/Fire, Building/Fire Inspector @ \$14.42/hr., from Building/Fire Inspector @ \$12.88/hr., effective 2/16/2009.
Richard Tracy	Building/Code/Fire, Building/Fire Inspector @ \$14.42/hr., from Building/Fire Inspector @ \$12.88/hr., effective 2/16/2009.
Matthew Hudson	Recreation, Part-time Recreation Assistant @ \$7.75/hr., from Part-time Recreation Assistant @ \$7.50/hr., effective 2/1/2009.
Michael Hudson	Recreation, Part-time Recreation Assistant @ \$8.00/hr., from Part-time Recreation Assistant @ \$7.75/hr., effective 2/1/2009.
Mary Depuy	Recreation, Part-time Recreation Assistant @ \$8.00/hr., from Part-time Recreation Assistant @ \$7.75/hr., effective 2/1/2009.

Unused Sick Leave Additional Day's Pay As per the Attachment.

SUPERVISOR YUDELSON

That's the end of the Regular Agenda, before we adjourn, is there anybody who would like to speak on any matter involving the Town of Henrietta?

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

My name is Jim McGovern, I live at 95 Bedfordshire Drive, and I'm here in my capacity as a Fire Commissioner for the Henrietta Fire District, and I have some documentation I want to pass out before I comment. (*Hand-out submitted.*) I'm here in response to a letter I received from the Town Attorney regarding an email that I sent to the members of the Town Board. I'd like to read the letter and then I'll entertain some questions. "*Dear Mr. Mastrella, In your February 11th letter to me, you failed to address the nature of the Public Hearing of December 17, 2008, which I referenced in my January 27, 2009 email to the Town Board. It stated in the Minutes for that Hearing, its purpose was to hear comments on the zoning change from R-1-20 to R-2-15, and a Special Use Permit.*

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Neither of these purposes must be automatically granted by the Town Board to any applicant. The Town Board should weigh the impact on the Town's taxpayers and service providers, such as the Fire District and the Volunteer Ambulance. Chief among the concerns I expressed was the high demand for our services that such facilities generate. Neither I nor the Fire Commissioner asked about changing the tax exempt status of the Project, or request that the Town Board judge the Application based solely upon the Applicant's tax status." I did misspeak in the last sentence in the email, I meant to say, "Payment In Lieu of Taxes, or PILOT, instead of Fire District tax." Again, I would remind you that the actual email actually detailed the number of responses we had to such facilities as Woodcrest, Brentland Woods, and the Legacy on Lehigh Station Road. Again, it was a case of a Public Hearing for the purpose of the zoning change, and a Special Use Permit, not as your Attorney referenced in his letter to me. Anybody have any questions so far?

DANIEL MATRELLA, TOWN ATTORNEY

Mr. McGovern, in response, and unfortunately I didn't have advance notice of your letter, but I can tell you that the Town Board certainly shared your exact concern regarding status of the Applicant and their Project, and they turned to me for advice in that regard. Based upon my research, there's no question that the tax exempt status cannot be considered as a factor in the land use decision of the Town Board. Certainly when there's a Public Hearing that the Board is going to listen to the comments that anybody in the public makes. You're comments echoed some of the sentiment of people who spoke at that Hearing, by the same token when it is clear from case law and legislative decision that a Town Board cannot consider the tax exempt status, it's my obligation to advise the Town Board of that, I did so, they made their decision based upon those factors presented to the Board aside from the tax exempt status of the Applicant. They looked at it as if the Applicant paid taxes just like anybody else and that's what they were obligated to do.

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

But, what I brought to you, to the Board's attention, I again stated for your benefit, is I asked about the impact on the Town and it's taxpayers, that's what I was referencing, at no time did I ask for, nor did the Fire Commission ask for, a change or an attack upon the tax exempt status. I've consulted our Attorney and she agrees with the position and she formulated this response. You should also know that there are other municipalities in the State of New York that do what they can to help out the different first responder services. The City of Ithaca receives one million three hundred thousand dollars (\$1,300,000) a year from Cornell, three hundred and sixty thousand (\$360,000) of that goes to their Fire Department for the demands on their services. The City of Troy is currently holding up an expansion of R.B.I.'s campus until they get an eight hundred and eighty thousand dollar (\$880,000) settlement for them in either goods or services. The Town of Brighton has a negotiated settlement with Monroe Community College, and you folks are aware of that, regarding the services and demands placed upon the West

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Brighton Fire District. So, you may not be aware of it, but that's a thing that's ongoing, and I would direct your attention also, to some recent articles that we've seen in the paper regarding the Eastview Mall expansion project and the hoopla that's been raised in the Town of Victor. These are all things that should be weighed by any municipal board, and that's what I was trying to do.

DANIEL MASTRELLA, TOWN ATTORNEY

And, I guess as you indicated, your Attorney has given you the same advice that I gave this Town Board.

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

No, she agreed with what I said that you could, for good and proper reasons, refuse to accept or approve the zoning change or the Special Use Permit.

DANIEL MASTRELLA, TOWN ATTORNEY

That's an entirely different issue.

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

That's what the Public Hearing was for, and that's what I was commenting on.

DANIEL MASTRELLA, TOWN ATTORNEY

Okay, that's not what the letter said.

SUPERVISOR YUDELSON

I just want Mr. Mastrella to speak to the matters in his letter, (*inaudible*) You talked about some other situations like out by Eastview Mall, obviously there's an impact there, but that's not involving a non-for-profit, and I think the point that we're making, and specifically, is that in considering this, just this Project, we had to consider it as if they weren't a non-for-profit, and as far as the impact on traffic and things like that, it did not rise to any level for the Board, as indicated by their vote, felt that this would be something that should not be approved, and as you know, I think on both Zoning and Planning or Special Permit issues there's very specific criteria in the law for what we can consider and what we can't. So, we can't just say, although I understand what you're saying, that we're not obligated to approve it, there's some pretty specific criteria under which we can (*inaudible*) I appreciate the clarification from your letter that you made and I appreciate you being here.

COUNCILWOMAN ZINCK

I think one other thing that needs to be added is, I hear what you're saying that there were some negative things to consider with the Project, you brought up one of them. However, there were many positive aspects of the Project . . .

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JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

But the point, one of the things that was lost in Mr. Mastrella's response to my email was the type of demand for services that those types of facilities generate, and I know first hand . . .

COUNCILWOMAN ZINCK

Right.

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

Nothing to shrug your shoulders . . .

COUNCILWOMAN ZINCK

Point well taken on that, and just so you know there were also many positive aspects to the Project that we weighed, as well.

SUPERVISOR YUDELSON

Jim, and in fairness, like you said, I'm glad you clarified that but in fairness to Mr. Mastrella, we didn't ask him to address that, we just asked him to address the things that were in this letter. But, I understand you wanted to make a point.

JIM McGOVERN, 95 BEDFORDSHIRE DRIVE

Alright. Thank you.

SUPERVISOR YUDELSON

Is there anybody else that would like to speak before we adjourn?

JOE MARTIN, 5781 WEST HENRIETTA ROAD

Good evening. Joe Martin from 5781 West Henrietta Road, and I'm here as Chairman of the Commission. I wasn't planning on speaking until after I heard the discussion with Mr. McGovern. I guess in your opinion, did the Town of Brighton do something wrong when they did what they did with M.C.C., and they denied M.C.C. the ability to build the additional dorms unless they came up with the money for the West Brighton Fire Department.

SUPERVISOR YUDELSON

We're not, that's not (*inaudible*)

JOE MARTIN, 5781 WEST HENRIETTA ROAD

Alright, well then, what I'd like to . . .

SUPERVISOR YUDELSON

Let me just finish, this is an opportunity for you to speak . . .

JOE MARTIN, 5781 WEST HENRIETTA ROAD
Okay.

SUPERVISOR YUDELSON
If any of the Board members . . .

JOE MARTIN, 5781 WEST HENRIETTA ROAD
Well then, I'd like to speak to the Board . . .

SUPERVISOR YUDELSON
Let me just finish, if afterwards if any of them would like to respond, that's up to them individually.

JOE MARTIN, 5781 WEST HENRIETTA ROAD
I'd like to speak to the Board then and ask for support. I get the opinion or the feeling and I haven't heard this from anybody particularly from this Board, but I get the feeling, the same feeling I get from R.I.T., do you people think we're here begging for money? We're asking you to help your fellow taxpayers. Close to thirty percent (30%) of the property value of this Town is tax exempt. A good portion of that tax exempt property requires more of the services of our company, the Fire District, than almost the rest of the Town, okay? When you help us, if you would, with these types of issues, this is one (1) example of the St. John's Project or maybe an R.I.T. type of thing, you're not helping us as the Fire District. We're not looking to line our pockets, every dollar that we can get from these people that are taking our services is going to help the seventy percent (70%) of the people in this Town that are footing the bill, the taxpayer. Which each one of you are as well as us as a commission and the members of our Fire District. That's what we're asking for help and we're giving these examples of other municipalities that have helped and have had success, and that's what we're asking for. It's not for our personal gain, it's not to line our pockets, if we get an extra two hundred and fifty thousand (\$250,000) out of R.I.T., it isn't like we're going to add that to our budget, that's two hundred and fifty thousand dollars (\$250,000) less that we can go to our taxpayers and ask for less from them, that's what we're looking for. We're not looking for more money. We can't do it without your help. There as certain projects when you do weigh these different projects that do benefit the Town because almost seventy percent (70%) or more of your budget comes from sources other than taxes. Ours is one hundred percent (100%) tax, with the exception of R.I.T.'s thirty thousand dollars (\$30,000), and that's our dilemma, and so we would just ask if you could, I think there's more discussion and going back and forth between the District and the Town than there has been in many years, we'd like to keep that going, but we can't do that by ourselves. Thank you.

SUPERVISOR YUDELSON
Is there anybody else that would like to speak before we adjourn? *(Pause, no response)*
If not, is there a motion to adjourn?

TB February 18, 2009

The Regular Meeting of the Henrietta Town Board was moved for adjournment by Councilwoman McCabe, seconded by Councilwoman Zinck at 8:35 P.M. and was adjourned without objection.

Respectfully submitted,

Leann C. Case
Deputy Town Clerk