

**TOWN OF SAND LAKE TOWN BOARD MEETING
OCTOBER 10, 2012**

A meeting of the Sand Lake Town Board was held on October 10, at 7:30P.M. at the Sand Lake Town Hall. After the Pledge of Allegiance, the following answered roll call:

PRESENT: Councilman Turner
Councilman Splain
Councilman Cioffi
Councilwoman Kronau
Supervisor Fasoldt
Town Attorney Russell Bennett

RECORDING SECRETARY: Laura J. Barber, Deputy Town Clerk

OTHERS PRESENT: Clyde Heffner, Justin Schultz, Bill Glasser, Nick Denos, Paul Glasser, Lindsay Marshall, Shane Cahill, Rob Stolker, Tom Hatcher, Fred Erickson, Brian Hunt and others.

CALL TO ORDER

Supervisor Fasoldt opened the Town Board meeting at 7:30 pm.

APPROVAL OF MINUTES –

Supervisor Fasoldt moved to approve the minutes of September 12, 2012, September 26, 2012 and October 3, 2012.

MOTION CARRIED = UNANIMOUS

MONTHLY REPORTS: DEPUTY TOWN CLERK- Laura J. Barber

- Money paid to Supervisor \$9,386.11
- Money paid to NYS Ag & Markets for spay/neuter program \$79.00
- Money paid to the Dept. of Environmental Conservation (Fishing /Hunting) \$6,719.54

Money paid to State Health Dept. for Marriage Licenses \$157.50

Please note that the Town is participating in a voter registration day on Saturday, October 13th from 2:00 to 9:00 pm. A previous voter registration event was held here at the Town Hall on Thursday, October 4th from 5:30 – 9:00 pm. This is a great opportunity for our unregistered town residents to register locally for the upcoming elections.

We would like to remind our residents now that summer has passed and fall is here the Town Clerk's office is open on Saturdays from 9:00 am – noon.

A special thank you to Keith Hammond for restructuring and painting our passport office making it possible to meet the future passport requirements as well as privacy for our residents seeking our passport service.

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Deer hunting doe permits have expired as October 1, 2012 and if more doe permits are available by the NYS Department of Environmental Conservation, they will be offered November 1st..

SUPERVISOR'S REPORT:

- Much time spent with regard to the Proposed 201 Budget.
- Applied for the Justice Court Assistance Grant.
- Met with Judith Goodyer – update Pictometry System.
- It was noted that the 3rd year of the Towns reevaluation process is coming up for 2013.
- Town wide garage sale held by the Business Association was a success.
- Community Grant Fund extended until July 13, 2013.
- Bridge construction is near completion.

COMMITTEE REPORTS:

YOUTH – Lindsay Marshall – Youth Director –On file in the Town Clerk's Office.

PLANNING BOARD – Justin Schultz - Planning Board member

BICENTENNIAL -Fred Erickson – On file in the Town Clerk's Office

PLANNING OVERSIGHT- Fred Erickson – On file in the Town Clerk's Office.

ENGINEERING -Lindsay Kestner - On file in the Town Clerk's Office

BOARD MEMBERS REPORTS:

PUBLIC WORKS – On file in the Town Clerk's Office.

HIGHWAY – On file in the Town Clerk's Office.

VETERANS – On file in the Town Clerk's Office

PARKS AND RECREATION – On file in the Town Clerk's Office.

CONVENIENCE FACILITY – Paul Splain – On File in the Town Clerk's Office

INSURANCE – Paul Splain – On File in the Town Clerk's Office

CABLE – Paul Splain – On file in the Town Clerk's Office

PHYSICAL FACILITIES - Mark Cioffi – On file in the Town Clerk's Office

INTERNAL CONTROL – Mark Cioffi – On file in the Town Clerk's Office

CULTURE AND ARTS - Christine Kronau - On file in the Town Clerk's Office.

PLANNING OVERSIGHT/LINKAGE STUDY – On file in the Town Clerk's Office.

YOUTH – On file in the Town Clerk's Office

SENIORS/SENIOR VAN – Christine Kronau – On file in the Town Clerk's Office.

ANIMAL CONTROL – Ray Turner - On file in the Town Clerk's Office.

STREET LIGHTS – None at this time.

BEACH – None at this time.

LIBRARY – Ray Turner - On file in the Town Clerk's Office.

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AMBULANCE/PUBLIC SAFETY – Christine Kronau - On file in the Town Clerk's Office.

ZONING UPDATE – On file in the Town Clerk's Office.

COMMENTS FROM RESIDENTS:

- Paul Glasser – Talked about Fire Prevention Weeks. Focusing on children and adults on what they should do in the home.
- Shane Cahill – Spoke with regard to the Gables at Sand Lake.

**RESOLUTION - TABLED -Notice of Public Hearing
Upon Preliminary Budget**

**RESOLUTION # 2012-10-134
Appointment – Mining Liaison Committee**

Supervisor Fasoldt moved and Councilman Kronau seconded the following resolution:

Whereas, on May 9, 2012 the Town Board of the Town of Sand Lake established a Mining Liaison Committee in accordance with the Town's Comprehensive Plan; now therefore,

Be it Resolved, that the Town Board of the Town of Sand Lake hereby appoints David Allegretta, of 76 Valley Drive, West Sand Lake, as a member of the Mining Liaison Committee to serve a term ending December 31, 2014.

ADOPTED = AYES 5 NAYS 0

**RESOLUTION #2012-10-135
Employee Indemnification – Public Officers Law**

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Whereas, it is best practice for the Town of Sand Lake to conduct periodic review and subsequent updates of its policies and practices, and

Whereas, the Board has reviewed its indemnification resolution under Section 18 of the Public Officers Law, now therefore,

Be it Resolved, at the Town of Sand Lake shall indemnify and hold harmless its employees and officers in the amount of any judgment obtained against such employees or officers in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; and provided further that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Town, and

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Be it Resolved, that in accordance herewith, that the benefits of Section 18 of the Public Officers Law contained herein are hereby conferred upon all employees and officers of the Town of Sand Lake; and

Be it Further Resolved, that the Town of Sand Lake agrees to be held liable for costs incurred under the provisions of Section 18 of the Public Law and that the benefits provided under this resolution shall be in addition to and supplemental to any defense or indemnification protection conferred by any other enactment.

Public Officers Law:

§ 18. Defense and indemnification of officers and employees of public entities. 1. As used in this section, unless the context otherwise requires:

(a) The term "public entity" shall mean (i) a county, city, town, village or any other political subdivision or civil division of the state, (ii) a school district, board of cooperative educational services, or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university, (iii) a public improvement or special district, (iv) a public authority, commission, agency or public benefit corporation, or (v) any other separate corporate instrumentality or unit of government; but shall not include the state of New York or any other public entity the officers and employees of which are covered by section seventeen of this chapter or by defense and indemnification provisions of any other state statute taking effect after January first, nineteen hundred seventy-nine.

(b) The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of a public entity, whether or not compensated, but shall not include the sheriff of any county or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

(c) The term "governing body" shall mean the board or body in which the general legislative, governmental or public powers of the public entity are vested and by authority of which the business of the public entity is conducted.

2. The provisions of this section shall apply to any public entity:

(a) whose governing body has agreed by the adoption of local law, by-law, resolution, rule or regulation (i) to confer the benefits of this section upon its employees, and (ii) to be held liable for the costs incurred under these provisions; or

(b) where the governing body of a municipality, for whose benefit the public entity has been established, has agreed by the adoption of local

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law or resolution (i) to confer the benefits of this section upon the employees of such public entity, and (ii) to be held liable for the costs incurred under these provisions.

3. (a) Upon compliance by the employee with the provisions of subdivision five of this section, the public entity shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the public entity employing such employee.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the chief legal officer of the public entity or other counsel designated by the public entity determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice, provided, however, that the chief legal officer or other counsel designated by the public entity may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the public entity to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing body of the public entity.

(c) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the employee delivers process and a written request for a defense to the public entity under subdivision five of this section, the public entity shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

4. (a) The public entity shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided further that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the governing body of the public entity.

(b) Except as otherwise provided by law, the duty to indemnify and

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save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(c) Nothing in this subdivision shall authorize a public entity to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to section fifty-one of the general municipal law; provided, however, that the public entity shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the chief administrative officer of the public entity; and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the public entity.

5. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon: (i) delivery by the employee to the chief legal officer of the public entity or to its chief administrative officer of a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the public entity based upon the same act or omission, and in the prosecution of any appeal.

6. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

7. This section shall not in any way affect the obligation of any claimant to give notice to the public entity under section ten of the court of claims act, section fifty-e of the general municipal law, or any other provision of law.

8. Any public entity is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, or authorized by law to transact business in this state, against any liability imposed by the provisions of this section, or to act as a self-insurer with respect thereto.

9. All payments made under the terms of this section, whether for insurance or otherwise, shall be deemed to be for a public purpose and

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shall be audited and paid in the same manner as other public charges.

10. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

11. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of any public entity by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

12. Except as otherwise provided in this section, benefits accorded to employees under this section shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment; unless the governing body of the public entity shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.

13. The provisions of this section shall also be applicable to any public library supported in whole or in part by a public entity whose governing body has determined by adoption of a local law, ordinance, by-law, resolution, rule or regulation to confer the benefits of this section upon the employees of such public library and to be held liable for the costs incurred under these provisions.

14. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

ADOPTED = AYES 5 NAYS 0

RESOLUTION # 2012-10-136

**Authorization - Retain Professional Engineering Services
Sanitary Sewer Flow Analysis - Kestner Engineering**

Supervisor Fasoldt moved and Councilman Cioffi seconded the following resolution:

Whereas, the Town of Sand Lake must prepare a Sanitary Sewer Flow Analysis Report to compare wet and dry weather flows of the Town's sanitary sewer system suitable for submission to regulatory agencies to demonstrate compliance with the Clean Water Act and other regulatory requirements; now therefore,

Be it Resolved, that the Town Board hereby authorizes the Supervisor, upon review of Counsel, to enter into an agreement with Mark L. Kestner, PE, Consulting

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Engineer, PLLC, 1 Kestner Lake, Troy, New York 12180, for a sum not to exceed \$3,500.

ADOPTED = AYES 5 NAYS 0

RESOLUTION #2012-10-137

Appointment – Environmental/Open Space/Recreation

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Whereas, on May 9, 2012 the Town Board of the Town of Sand Lake established an Environmental/Open Space/Recreation Committee in accordance with the Town's Comprehensive Plan; now therefore,

Be it Resolved, that the Town Board of the Town of Sand Lake hereby appoints Charles Fredrickson, of 4 Beach Lane, Averill Park, as a member of the Environmental/Open Space/Recreation Committee to serve a term ending December 31, 2014.

ADOPTED = AYES 5 NAYS 0

RESOLUTION # 2012-10-1238

Proclamation Recognizing Bullying Awareness Month

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Whereas, we must safeguard schools and communities for our children, and, through our recognition of the serious issues that face them each day, offer our children an environment that holds promise and security; and

Whereas, many organizations, municipalities, school districts, educators, and parents have publicly expressed concern about the bullying of children; and

Whereas, each day an estimated 160,000 children refuse to go to school because they dread the physical and verbal aggression of their peers, and the loneliness that comes from being excluded and made the target of rumors and cyber-bullying; many more students attend school in a chronic state of anxiety; and

Whereas, it is important that we acknowledge and heighten awareness about the serious issues and the negative effects of bullying, including the long-term damage it can cause in our youth as well as the risks of teenage suicide; and

Whereas, providing a safe physical and emotional environment is a significant goal and a personal responsibility of each individual; and

Whereas, it is time to “**Stand UP for Character – DOWN to Bullying!**”; now, therefore be it

Proclaimed, that the Town of Sand Lake does hereby designate the month of

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October 2012 as Bullying Awareness Month as a symbol of our commitment to the year-round struggle against bullying.

ADOPTED = AYES 5 NAYS 0

RESOLUTION #2012-10-139

Appointment – Deputy Registrar of Birth Certificates

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Be it Resolved, that in compliance with Passport Agency Regulations, the Town Board of the Town of Sand Lake hereby appoints Jane McClellan as Deputy Registrar of Birth Certificates.

ADOPTED = AYES 5 NAYS 0

RESOLUTION #2012-10-140

Appointment – Deputy Registrar of Vital Statistic

Supervisor Fasoldt moved and Councilman Cioffi seconded the following resolution:

Be it Resolved, that the Town Board hereby appoints Laura Barber as Deputy Registrar of Vital Statistics.

ADOPTED = AYES 5 NAYS 0

RESOLUTION #2012-10-141

Approval of the Standard Work Day for Retirement

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Whereas, the the New York State Office of the Comptroller requires that municipalities establish a standard work day and reporting requirement by resolution, and

Whereas, the Town Board has received and reviewed all required time sheets and records to adopt the attached “standard work day and reporting resolution” in compliance therewith; now therefore,

Be it Resolved, that the Sand Lake Town Board hereby adopts the attached “standard work day and reporting resolution”; and

Be it Further Resolved, that the Town Board hereby authorizes the Town Clerk to sign said resolution and present the same along with a certified copy of this resolution to the New York State Office of the Comptroller.

ADOPTED = AYES 5 NAYS 0

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RESOLUTION #2012-10-142

Authorization – Agreement with Ely Law Firm

Supervisor Fasoldt moved and Councilman Cioffi seconded the following resolution:

Whereas, at the September 12, 2012 meeting of the Sand Lake Town Board, the Board authorized Deputy Town Attorney Scott J. Ely's law firm - Featherstonhaugh, Wiley and Clyne - to provide services related to the Town's current litigation in the case of Glass Lake Preservation Corp. v. Town of Sand Lake; and

Whereas, the Town of Sand Lake was recently notified that Deputy Town Attorney Scott J. Ely has left the Featherstonhaugh firm and has established the Ely Law Firm, LLC with offices within the Town; and,

Whereas, the Town's current litigation in the case of Glass Lake Preservation Corp. v. Town of Sand Lake continues to require extraordinary commitments of time and legal resources, and

Whereas, the Town's legal department may need to respond on short notice to motions and applications for relief that require document assembly and production that exceed the capacity to respond using Town Hall resources, and

Whereas, the Town is currently realizing considerable savings using in-house legal resources and may continue to do so if it retains the services of an outside firm providing litigation backup and support services; now, therefore

Be it Resolved, that the Town Board authorizes the Supervisor to enter into a retainer agreement for the services of Scott J. Ely at the rate of \$200 per hour for legal services, and an hourly rate ranging of \$75 to \$100 for paralegal and clerk services and charges at cost for all other expenses.

ADOPTED = AYES 5 NAYS 0

RESOLUTION # 2012-10-143

**Authorization – Retain Legal Services – Patrick Seely
Tax Certiorari Case**

Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Be it Resolved, that the Town Board authorizes the Town Supervisor, upon review of Counsel, to retain the legal services of Patrick Seely of **Hacker Murphy, LLP**, 7 Airport Park Boulevard, Latham, New York 12110 in relation to the tax certiorari case – Ucci v. Town of Sand Lake.

ADOPTED = AYES 5

RESOLUTION # 2012-10-144

Budget Transfers and Amendment

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Supervisor Fasoldt moved and Councilwoman Kronau seconded the following resolution:

Be it Resolved, the following transfers and amendments are made to the 2012 Budget:

<u>From</u>	<u>To</u>	<u>Amount</u>
A 1410.4 Town Clerk Contractual	A1410.2 Town Clerk equipment	\$ 796.00
A 1990.4 Contingency Contractual	A 1420.4 Attorney Contractual	\$3,000.00
A 3620.1 Safety Inspection Personnel	A7989.4 Other Culture & Rec (Bicentennial)	\$ 990.00
A 3620.1 Safety Inspection Personnel	A 7140.4 Playground and Recreation Contractual (Park)	\$ 1,000.00
A 3620.1 Safety Inspection Personnel	A 7150.1 Special Recreation Pers. (Beach)	\$ 1,178.00
A 3620.1 Safety Inspection Personnel	A 9060.8 Hospital & Medical Ins.	\$11,800.00
A 7150.2 Special Recreation Equip (beach)	A 7150.1 Special Recreation Contract. (beach)	\$ 86.89

Budget Amendment

Budget Transfers and Amendment

None at this time

ADOPTED = AYES 4 NAYS 1 (Councilman Splain voted No)

COMMENTS FROM RESIDENTS: None at this time.

Supervisor Fasoldt moved to go into Executive Session at 9:10PM. to discuss GLPC vs. Town, Crown Atlantic vs. Town, Garewal vs. Town.

MOTION CARRIED = UNANIMOUS

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Supervisor Fasoldt reopened the meeting at 9:46 PM. She announced that no action was taken.

Supervisor Fasoldt moved to adjourn the meeting at 9:47 PM.

MOTION CARRIED = UNANIMOUS

A complete accounting of all discussions on agenda is available for review on audio tape in the Town Clerk's Office.

Respectfully submitted,

Laura Barber
Deputy Town Clerk