

**TOWN OF ORANGETOWN
REGULAR TOWN BOARD MEETING
TUESDAY, MARCH 9, 2010**

This Town Board Meeting was opened at 7:33 p.m. Supervisor Whalen presided and the Town Clerk called the Roll. Present were:

Councilwoman Nancy Low-Hogan
Councilman Michael Maturo
Councilman Thomas Diviny
Absent: Councilman Denis Troy

Also present: Charlotte Madigan, Town Clerk
John Edwards, Town Attorney
AnnMarie Hahr, Executive Assistant to the Supervisor
Charles Richardson, Director of Finance
Ron Delo, Director of the Dept. of Env'tl Management & Engineering
Kevin Nulty, Police Chief

Esta Baitler led the Pledge of Allegiance to the Flag.

Supervisor Whalen read a proclamation designating March 20, 2010 as Mel Liebmann Day.

Summary of Public Comments (RTBM):

Gerald Bottari, OPD Sergeant and a Delegate of the PBA representing Lieutenants and Sergeants, said the Town Board voted 3-1 to call for the Chief's exam. Why was it canceled without a resolution and on whose recommendation? The Town Board hired Lance Klein of Keane & Beane to represent Chief Nulty in a lawsuit. How is it that this attorney, hired by the Town was successful in having the test cancelled. Who will incur the cost of this litigation? What occurred in court on the 3rd of March and the 5th of March? We the members of the Orangetown PBA are here tonight anticipating answers to these questions.

Jim Kelly, PBA representative, said the board on January 26, 2010, passed a resolution directing the Town Supervisor to request the Rockland County Department of Personnel to conduct a promotional examination for Chief of Police. Subsequent to that resolution, actions of employees of the town, paid by the town, actively worked to subvert the resolution for the promotional examination-directly contrary to the stated desire of the board that the examination take place.

After the town resolution calling for the promotional examination, our eligible members signed up and began preparing for the exam. The Chief made a request to the Department of Personnel to take the exam but was denied as he did not meet the requirements of being either a captain or a lieutenant. Next, it is our understanding that the Chief solicited the Town Board to allow him to use the attorneys he had defending the lawsuit to bring an action so that he could take the Chief's exam. Remarkably, after requesting to take the examination and telling the board he was going to use the attorneys to be allowed to take the exam, the Chief's attorneys brought an action to cancel the entire exam. So now.... We have the Town Board paying for the attorneys for the Chief to defeat and undermine the resolution of the Town Board for a promotional examination. At best, this is bizarre. Clearly it is a waste of taxpayer money. The Chief's argument to cancel the exam was defective...it did not meet the requirements for an injunction to stop the examination. When it was realized that the application was defective and the defects had been pointed out to the court, the town attorney made an agreement with Chief Nulty, allegedly on behalf of the Town, to cancel the exam. On the basis of the agreement between the Chief and John Edwards and on no other basis, the judge ordered that the Chief's examination was "cancelled". Thereafter, the county issued a notice of intent to appeal. At the last moment, Friday night at approximately 10:30 pm, the Chief's attorneys went to the Appellate Division and got a judge to rule that the automatic stay was not effective. Again, the Chief took action with attorneys paid for by the town to stop the examination directly contrary to the Town Board resolution. Also, remarkably, at that Appellate conference, John Edwards stated that in fact he entered no agreement with the Chief. As such, the Chief got to stop the examination without having to waive not bringing the same action next year. A solid win for the Chief in direct contradiction to the Town's direction, paid for by the town, and partially engineered, either

incompetently or deliberately by the town attorney. At this time we have an Order staying the promotional examination based upon an agreement that John Edwards said he never made! Needless to say, our members who were cheated out of taking the examination are disappointed. The lieutenants spent countless hours away from their families and also spent hard earned money in preparation for the test. We the PBA members request the Town Board to stand by their original request.

Michael Mandel, Pearl River, questioned item no. 19 and said the taxpayers should be told the total salary package for the new Database Administrator position. He asked for a resolution requesting the MTA to cancel the planned cuts on the Pascack Valley train that serves Pearl River.

Eileen Larkin, Palisades, requested the RPC property be taken off the market and a committee formed to develop a new RPC master plan. She requested the Cablevision committee be reactivated.

Esta Baitler, Consumer Advocate for Cathy Lukens Home, thanked the Supervisor Whalen, Jim Dean and others for sidewalks along Route 340. She contacted CFX asking them not to let the trains idle all night.

Carol Silverstein, Orangeburg, would like the Board to address the automated golf system, the golf pro contract and employee contributions for medical benefits.

RESOLUTION NO. 166

CLOSE PUBLIC COMMENTS

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the public portion is hereby closed.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
 Supervisor Whalen
 Noes: None
 Absent: Councilman Troy

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Supervisor Whalen said there is a resolution coming under new business, from the Town Attorney's Office, regarding the Chief of Police test.

RESOLUTION NO. 167

OPEN CONTINUANCE PH/ORANGE & ROCKLAND UTILITIES/TRANSITION TOWER SPECIAL PERMIT

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the 8:00 p.m. continuance of a public hearing to consider the application of Orange & Rockland Utilities, pursuant to the provisions of Chapter 43 of the Town Zoning Law, Table of General Use Regulations for the R-80 zoning district at Col. 3, Town Board No. 5 (expressly made applicable to the R-22 zoning district), for a special permit permitting the installation and construction of "H-frame" structures to transition overhead lines to the underground lines at the Corporate Drive substation with fence enclosure is hereby opened. The proposed project will be located in an existing Orange & Rockland right-of-way south of Orangeburg Road (a/k/a Veterans Memorial Drive), approximately 300 ft± west of the intersection of Lester Drive on property bearing Tax Map designation Section 74.09, Bl. 2, Lot 2 on the Tax Map of the Town of Orangetown.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
 Supervisor Whalen
 Noes: None
 Absent: Councilman Troy

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Charlotte Madigan, Town Clerk, presented the Affidavit of Publication and the Notice of Posting; copies are labeled Exhibit 3-C-10 and made a part of these minutes.

RESOLUTION NO. 168**CONTINUE PH /ORANGE &
ROCKLAND UTILITIES TRANSITION
TOWER/SPECIAL PERMIT**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that this public hearing will continue on April 13, 2010 at 8:00 p.m.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 169**OPEN PH/EMPIRE ZONE/APPROVE
SITE DESIGNATION/AERCO
INTERNATIONAL BRADLEY
CORPORATE PARK/70.06-1-1.12**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the 8:05 p.m. public hearing to receive public comment on a concurring resolution to amend the Rockland County Empire Zone boundaries to allow for designation of land as a Regionally Significant Project through the Empire Zone Program is hereby opened. The Aerco International project meets the criteria and is to be located at Tax Parcel ID#70.06-1-1.12, Bradley Corporate Park.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

Charlotte Madigan, Town Clerk, presented the Affidavit of Publication and the Notice of Posting; copies are labeled Exhibit 3-D-10 and made a part of these minutes.

Steve Porath of the Rockland Economic Development Corporation, explained that they are asking the Town Board to approve a resolution to request the State of New York to designate a parcel at Bradley Corporate Park for an Empire Zone designation. This does not impact any other zone designated areas. It is almost like spot zoning for the Empire Zone for this parcel. It is an addition to other parcels and what that will do is open the doors for us to attract Aerco International from northern New Jersey to build a new site at Bradley Corporate Park creating 150 new jobs and probably over \$17 million dollars in building construction and equipment purchases in outfitting that site. Aerco International is a long-time manufacturer of high efficiency of water boilers and heaters. I think, from an economic standpoint this is a good win for us and the Empire Zone is a valuable tool that is letting this happen.

Public portion:

Eileen Larkin, Palisades, said the board has an obligation to make sure that the company is in compliance with criteria that is on the books; hiring of local people and them paying their fair share of taxes.

Michael Mandel, Pearl River, asked what guarantees are in the contract to keep these companies here? When was part of Blue Hill switched into the Empire Zone? Will this designation affect the taxes to the Pearl River School District?

Thom Kleiner, Sparkill, has always been in favor of Empire Zone site designations. Creation of jobs is important in these times.

RESOLUTION NO. 170

**CLOSE PH/ EMPIRE ZONE/APPROVE
SITE DESIGNATION/AERCO
INTERNATIONAL BRADLEY
CORPORATE PARK/70.06-1-1.12**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the public portion of this public hearing is hereby closed.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

RESOLUTION NO. 171

**LEAD AGENCY/ EMPIRE ZONE
APPROVE SITE DESIGNATION/AERCO
INTERNATIONAL BRADLEY
CORPORATE PARK/70.06-1-1.12**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Town Board declares itself Lead Agency in this matter.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

RESOLUTION NO. 172

**SEQRA DECLARATION/EMPIRE
ZONE/APPROVE SITE DESIGNATION
AERCO INTERNATIONAL BRADLEY
CORPORATE PARK/70.06-1-1.12**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that a SEQRA Declaration of non-significance, indicating that the action the Town Board is contemplating, will not have a significant negative impact on the environment, is hereby adopted; a copy is labeled Exhibit 3-E-10 and made a part of these minutes.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

RESOLUTION NO. 173

**TOWN BOARD DECISION/ EMPIRE
ZONE/APPROVE SITE DESIGNATION
AERCO INTERNATIONAL BRADLEY
CORPORATE PARK/70.06-1-1.12**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that upon the recommendation of the Town Attorney, the following Empire Zone site designation is hereby approved:

**TOWN OF ORANGETOWN
RESOLUTION OF SUPPORT AND CONCURRENCE WITH THE ROCKLAND
COUNTY EMPIRE ZONE REGIONALLY SIGNIFICANT PROJECT APPLICATION**

Resolution No. 173 - Continued

WHEREAS, New York State has created the Economic Development Zone Program, now known as the Empire Zones Program, to encourage industrial and commercial development in select municipalities across the State, and

WHEREAS, the Town of Orangetown, as an eligible municipality in conjunction with the County of Rockland, received designation of an Empire Zone as a distinct and separate contiguous areas pursuant to Section 957 (d) of the general municipal law, and

WHEREAS, New York State has amended the Zones program to increase benefits and allow additional areas to be deemed as Regionally Significant Projects, and

WHEREAS, the County of Rockland and the Town of Orangetown intend to amend the County Empire Zone boundaries to encourage industrial and commercial development and to allow for the designation of lands in the Town of Orangetown for a Regionally Significant Project, and

WHEREAS, Aerco International, located at Bradley Corporate Park, Orangetown, NY, Parcel ID#: 70.06-1-1.12, meets the criteria of 957 (d) of the general municipal law as a regionally significant project by creating 50 new manufacturing jobs for inclusion within the Rockland County Empire Zone in an area outside the distinct and separate contiguous areas, and

WHEREAS, the Town of Orangetown wishes to support and concur with the Empire Zone designation of Tax Parcel ID#: 70.06-1-1.12, as a Regionally Significant Project on behalf of Aerco International, and

NOW, THEREFORE, be it resolved that the Town of Orangetown Town Board, in its capacity as governing body of the Town of Orangetown, does hereby support and concur with the Rockland County Empire Zone to include the properties more particularly described below as follows: Tax Parcel 70.06-1-1.12.

Ayes: Councilpersons Low-Hogan, Maturo, Diviny
 Supervisor Whalen
 Noes: None
 Absent: Councilman Troy

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RESOLUTION NO. 174

**VCS GAY PRIDE ROCKLAND
 APPROVE AID REQUEST**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the request from VCS Gay Pride Rockland for the use of the Town Showmobile, Sunday, June 13 8:00 am – 5:00 pm, for a rental fee of \$350.00, is hereby approved.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
 Supervisor Whalen
 Noes: None
 Absent: Councilman Troy

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RESOLUTION NO. 175

**PEARL RIVER CHAMBER OF
 COMMERCE/APPROVE AID
 REQUEST**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

Resolution No. 175 - Continued

RESOLVED, that the request from the Pearl River Chamber of Commerce for the use of the Town Showmobile for Saturday, October 2nd for Pearl River Day, for a rental fee of \$350.00, is hereby approved.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 176**BLAUVELT VOLUNTEER FIRE COMPANY
APPOINT/FIREFIGHTER PHILIP LITZ**

Councilman Diviny offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that Philip Litz is hereby appointed to the position of volunteer firefighter to the Blauvelt Volunteer Fire Company.

Ayes: Councilpersons Diviny, Low-Hogan, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 177**258 SOUTH BOULEVARD SUBDIVISION
VOZZA/DEMARCO RELEASE
PERFORMANCE BOND**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that upon the recommendation of the Planning Board (PB 2010-06), the Town Highway Department, DEME and the Town Attorney's Office, the Town Board hereby authorizes the release of the 258 South Boulevard Subdivision Performance Bond in the sum of \$44,958.00, and letter of credit issued by Valley National Bank (No. 3260), originally posted by Joseph Vozza and Michael J. DeMarco, and accepted by the Town pursuant to Town Board Resolution 2005-586."

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 178**COMBINE AGENDA ITEMS**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that agenda items 15, 16 and 17 are hereby combined.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 179**ABPHIL ASSOCIATES/65.28-1-5.1 & 5.2
TAX CERTIORARI SETTLEMENT/**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

Resolution No. 179 - Continued

RESOLVED, that upon the recommendation of the Town Attorney's Office and the Assessor, Dennis D. Michaels, Deputy Town Attorney, is approved and authorized to sign the Order and Judgment and Stipulation of Settlement regarding the tax certiorari proceeding *Abphil Associates, v. The Assessor of the Town of Orangetown, et al.*, Tax Map designation 65.28-1-5.1 and 5.2 for the tax assessment years 2006 through 2009, for a total refund by the County of \$1,120, and for a total refund by the Town of \$4,004. Interest on the Town's liability as a result of assessment decrease or refund is waived if payment is made within sixty (60) days after a copy of the order based upon the settlement is served on the Town.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 180**CLARINS USA/73.16-2-78/ TAX
CERTIORARI SETTLEMENT**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that upon the recommendation of the Town Attorney's Office and the Assessor, Dennis D. Michaels, Deputy Town Attorney, is approved and authorized to sign the Stipulation of Settlement and Order regarding the tax certiorari proceeding *Clarins USA, Inc. v. The Town of Orangetown, et al.*, Tax Map designation 73.16-2-78 for the tax assessment years 2008 and 2009, for a total refund by the County of \$22,701, and for a total refund by the Town of \$72,800. Interest on the Town's liability as a result of assessment decrease or refund is waived if payment is made within sixty (60) days after a copy of the order based upon the settlement is served on the Town.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 181**780 PIERMONT AVE. LLC/75.30-1-19
TAX CERTIORARI SETTLEMENT**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that upon the recommendation of the Town Attorney's Office and the Assessor, Dennis D. Michaels, Deputy Town Attorney, approved and authorized to sign the Stipulation of Settlement and Order regarding the tax certiorari proceeding *780 Piermont Ave LLC. v. The Town of Orangetown, et al.*, Tax Map designation 75.30-1-19 for the tax assessment years 2008, for a total refund by the County of \$353, and for a total refund by the Town of \$376. Interest on the Town's liability as a result of assessment decrease or refund is waived if payment is made within sixty (60) days after a copy of the order based upon the settlement is served on the Town.

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 182**ASSISTANT PLANT OPERATOR II
KEITH BRENNAN/APPOINT/DEME**

Councilman Diviny offered the following resolution, which was seconded by Councilman Low-Hogan and was unanimously adopted:

Resolution No. 182 - Continued

RESOLVED, that upon the recommendation of the Personnel Administrator, Town employee, Keith Brennan, is hereby appointed to the position of Assistant Plant Operator II (Trainee) in the Department of Environmental Management & Engineering, provisional, grade 12, step 8, annual salary \$69,505, effective March 10, 2010.

Ayes: Councilpersons Diviny, Low-Hogan, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Denis Troy

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RESOLUTION NO. 183**DATABASE ADMINISTRATOR
CREATE POSITION**

Councilman Diviny offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that upon the recommendation of the Personnel Administrator, an IT position, in the title of Database Administrator, is hereby created, effective immediately.

Ayes: Councilpersons Diviny, Low-Hogan, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 184**FIRE SUPPRESSION SYSTEM
AMERICAN PETROLEUM EQUIPMENT
& CONSTRUCTION CO./AWARD RFP**

Councilman Diviny offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that upon the recommendation of the Superintendent of Highways, the RFP for Fire Suppression System, in the amount of \$25,840.00 is hereby awarded to American Petroleum Equipment & Construction Co., Inc., Walden, New York, the lowest qualified Bidder, to be charged to Account No. D5112/0457.

Ayes: Councilpersons Diviny, Low-Hogan, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 185**STREET LIGHTS/MIDDLETOWN
ROAD/HOLT DRIVE/APPROVE**

Councilman Maturo offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that upon the recommendation of the Traffic Advisory Board, the installation of nine (9) street lights, to be mounted on existing utility poles, located on the east side of North Middletown Road, between East Central Avenue and Holt Drive, Pearl River at a cost of approximately \$3,000.00 per year, to be charged to Account No. B5182174/50455 (Street Light Account) is hereby approved.

Ayes: Councilpersons Maturo, Low-Hogan, Diviny
Supervisor Whalen
Noes: None
Absent: Councilman Troy

RESOLUTION NO. 186**BUSINESS AUTOMATION SERVICES,
INC./APPROVE CONTRACT**

Councilman Diviny offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that the contract with Business Automation Services, Inc., for \$51,910, for the following, including 2010 maintenance, to be charged to Account No. A1682004/50457, is hereby approved.

Integrated Property System:	\$33,480 (Building & Fire Prevention)
Tax Collection System:	\$13,040 (Receiver of Taxes)
Internet Tax Tier 2:	\$ 3,210 (Receiver of Taxes)
E-Government:	\$ 2,180 (Receiver of Taxes)

Ayes: Councilpersons Diviny, Low-Hogan, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 187**CANDLE/APPROVE CONTRACT**

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the CANDLE Contract for 2010, in the amount of \$56,411, for substance abuse prevention, to be charged to Account No. 4211004/50457, is hereby approved.

Ayes: Councilpersons Maturo, Diviny, Maturo
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 188**ACCEPT MINUTES**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the February 9, 2010 Regular Town Board Meeting and Audit Meeting minutes; the February 23, 2010 Regular Town Board Meeting, Audit Meeting and Executive Session minutes are hereby accepted.

Ayes: Councilpersons Low-Hogan, Maturo, Diviny
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 189**RECEIVE/FILE DOCUMENTS
TOWN CLERKS OFFICE**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the following documents are received and filed in the Town Clerk's Office:

- Change Order No. 2 for Tier II/III Pumping Stations (PS-06-3E) with All Bright Electric.

Resolution No. 189 – Continued

- Change Order No. 2 for Tier II/III Pumping Stations (PS-06-3G) with Coppola Services, Inc.
- Annual Financial Report for Tappan Fire District (Fiscal Year Ended 12/31/2009).

Ayes: Councilpersons Low-Hogan, Diviny, Maturo
Supervisor Whalen

Noes: None

Absent: Councilman Troy

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New Business

Councilman Maturo requested information from John Edwards and Supervisor Whalen as to what transpired over the past five days regarding the Police Chief's exam.

John Edwards said let me answer a couple of the questions that were raised by those who spoke during the public portion. Gerry Bottari, I have known for a good number of years and he asked a number of questions. I am going to answer the questions the best as I recall them. First, Mr. Klein of Keane & Beane was not retained by the Town Board to represent the Town. He was retained because there was a conflict between the Town and the Chief in the context of the lawsuit and so, under the Defense and Indemnity Statue, adopted by the Town Board pursuant to the Town Law, he is entitled to separate counsel, counsel to represent his interest not those of the Town. The simple fact that he is in a lawsuit, that effects his position and he needs separate representation and that's what happened, that's why separate council was appointed. Mr. Klein is not representing the Town and he is not involved in the litigation to speak for the Town. He is there to speak for the Chief, who is his sole client. That Statue is the very same Statue that guarantees separate representation and indemnification for every Town employee, including every PBA member here. I would be shocked, if there had not been incidents in the past where that situation arose and there will be in the future. So, that is why he was hired. Gerry, you had asked, you had stated that he was hired to help allow the Chief to take the exam. That is simply wrong. I do not where you got that idea or anybody else may have gotten that idea. How he chooses to defend the lawsuit that was brought by the Seidels, by counsel for the PBA is entirely up to him. I represent the Town and Keane & Beane represents the Chief and rather than seek to take the exam, in the context of the ongoing litigation, he chose to challenge the exam. That is what brought us to court. If that is a waste of taxpayers' dollars, you know, I guess that is for different people to evaluate, as they evaluate other actions taken by the Board, by municipal entities and others involved in municipal employment. Officer Kelly, I do not know. We have never met. So, I give you the benefit of the doubt of simply not knowing what happened, when you stated certain things and made certain comments. First and foremost, the agreement between Nulty and John Edwards and no other authority; now that is simply wrong (I'm sorry I don't know where you are) well, very well that's simply wrong and I give you the benefit of the doubt of simply not knowing, although your attorneys who were present in court, fully well knew that was not the case and if they told you that was the case then they missed informed you. There was no agreement between Chief Nulty and John Edwards on no other authority. In point of fact that you correctly pointed out, when you said that the Chief got the benefit of both worlds, if you will, because we denied that there was an agreement. The simple fact is there was no agreement. Was there an attempt of an agreement? Yes. There was an attempt at an agreement, in the context of litigation that was brought by the court on Wednesday before a Saturday test, when there was no intervening Board action and no Board member there. It was in the context of a motion, not the settlement of a lawsuit. The lawsuit is unaffected. The motion was brought. It was there on Monday. The counsel for the PBA was there on Monday. The case was put over until Wednesday by Judge Jamieson, so that the County attorney familiar with the law and the proceeding could appear and on Wednesday morning we were presented with a proposed solution. That solution was that they would withdraw the Order to Show Cause requesting that the test be cancelled, if the Town would withdraw the request and there would be an agreement that the test would be held in March 2011, when the lawsuit could be very well be ongoing continuing. Now, there was a motion before the court, which the court could of granted without condition and in fact, that is what ultimately what happened. It happened because there was no agreement. I told the attorneys that I would not recommend that to the Board. I would make a call, I would make a call and convey the suggestion of the Chief's attorneys conditioned on an affirmative waiver by him that he would not challenge the test in March 2011 and by the way,

the only reason we are talking a year apart is because of the position taken by the County attorney, which I do not think is correct, pursuant to which the exam is given once a year. In point of fact, the exam is given on a cycle, once a year. That is not the same as saying it can not be given before the expiration of a year. Nevertheless, I suggested that if the Chief were willing to affirmatively waive his right to contest the exam in 2011, regardless of the state of the lawsuit (the lawsuit may or may not be resolved by then, but then again there is the appeal process so it is unlikely its resolved then). He agreed to affirmatively waive his right to challenge that, at that point in time. With that I made a phone call. No, Officer Kelly, on no authority other than myself is false and Joe Baumgartner knows that and Joe Fortunato knows that, Judge Jamieson knew that and everyone present in the court and everyone reporting back to the PBA knows that. I made no decisions on my own. I made no decision without consultation. I made a phone call. I made two phone calls and I was told to make the deal. Not that I couldn't have done it myself, in the context of a motion in an ongoing lawsuit, where decisions have to made, we do not have Board meetings every time decisions are made in court. That said, I don't make those decisions lightly and I don't make them on my own. The suggestion otherwise is false and perhaps you ought to speak to your attorneys so that they can convey true information. I say your attorneys because I sat here, by the way, about three weeks ago, when I was criticized for comments made in the Journal News by me, Mr. Lieberman is here, the comments were not entirely accurate but I adopt them and embraced them anyway and I heard the President of the PBA criticized me because he said that the lawsuit was not brought by the PBA, it was brought by the Seidels privately. That PBA had nothing to do with it. Notwithstanding, that the PBA had suggested the lawsuit, had threaten the lawsuit, had brought all the information forward at an earlier time regarding the lawsuit, and notwithstanding, that Mr. Seidel might have known for a long long time, who is a member of the PBA, a retired member of the PBA and notwithstanding that the law firm representing the Seidels brought the lawsuit but the PBA had nothing to do with it, until we were in court on Wednesday, when Joe Baumgartner, Bunnyan and Baumgartner, the attorneys for the PBA, stood up and said he represents the PBA in the proceeding.

Joe Baumgartner - With respect to the . . .

John Edwards - I'm speaking.

Joe Baumgartner - With respect to the people that had to take the test and not for any other reason.

John Edwards - that's nice Joe but that is not what you said.

Joe Baumgartner - it is what I said.

John Edwards - so, we are in court and there is a proposed resolution but the County attorney disagreed and that is o'kay. The Commissioner of Personnel is a party and so in point of fact there was no agreement. The agreement that we sought perhaps to broker, which would have guaranteed a test in March 2011, was thwarted and yes Judge Jamieson referenced our attempt at an agreement in her determination but the order that was issued was issued by her and frankly it was not on agreement. She cancelled the test. She cancelled the test. There may have been countless hours spent by people studying, well I hope things will learn that will be a benefit, that's the purpose of studying but if you want to come out in mass and flex your muscle and criticize, get the facts right and they are wrong. If there are questions from the Board, I will be happy to answer them.

Councilman Maturo said I think it is important for us, first of all John, I have always found you to be extremely confident and I like the fact that you made no decision on your own and in fact that is why we have Deputy Supervisors, two in this case. The real question is, because at the best, the very best, well I was not notified to any thing that transpired without having asked for it and that is where I find the problem. I wasn't even present for the original vote but as a board member, I have an interest as to what goes on, after the Board passes a resolution, so the question really is for Paul. In lieu of the fact that Denis is not here and I understand he had personal matters to attend to, he did send an email to all of us indicating that it was a mistake that he regrets and he apologizes for any sort of problems it caused. As I did with Thom and as anyone would do with the Supervisor, I think we are looking to you for leadership and clarity because ultimately, at best, what this situation represents, at best, is just mismanagement and miscommunication on a highly sensitive issue. An issue that you knew was very sensitive going

into it. When the Board was talking about the situation, and this ties in of course to moral that we have seen in the past year and I say that because we asked for and part of why I think a lot of folks are here, we as a board asked for a lot more communication as to how people would be communicated with in terms of the administration and the people on the force and even among the Board. I did not see any communication and I am surprised that people were at the test and were turned away. Maybe there was another lack of communication there but at the very best it is mismanagement of a highly sensitive issue and someone needs to take some responsibility. I think that is not just the people in this room are looking for but I know for a fact that people in this entire community are looking for someone to take responsibility for something that is indicative of troubles that have been going on for a long time, indicative of miscommunication among this board and I would like to know what your thoughts are on this Paul because what you knew and whether you knew it and when you did know it If you knew what was going on, that's bad enough and if you didn't know that is even worse. So, all I am asking for is just where are you on this and it is for the public clarification to and also how are you going to ensure that anything like this is properly communicated to the Board without having to ask and hear rumors on the street before I have to ask the Attorney's office or anyone else, Denis for that matter, as to what was going on and how are you going to make sure that this is fixed, related to the test and among other things.

Councilwoman Low-Hogan agreed with Mike that there has been a lot of lack of communication. I guess I will speak for myself. For my part, I was really left out. I actually got some of my information from the Journal News on-line because I was not getting any information from anybody at all. I sent a couple emails asking what's going on, what's the status, what's the update. So as the result, I'm a little in the dark about some of these details and I don't feel comfortable, frankly, voting on this resolution that we got today in the mail as I recall. Isn't that right? O'kay. Now for example, on what bases did the attorney, Klein, challenged the exam? What was his argument? I don't get that. What was that? You see, there are some basic things here that I don't even know. I'm asking John Edwards if he knows. He challenged it on what bases?

John Edwards said he brought an application as opposed to (withdrawn) as opposed to an application to allow him to sit for the exam. He brought an application to cancel the exam. He sought to stay the exam in a motion in the existing lawsuit and on an application for a stay, he has to make a three-fold showing: 1. A likelihood of success on the merits. 2. That he will suffer irreparable harm and 3. The on balanced equities lie in his favor. His claim, essentially, was that if the test were to go forward, he would be irreparably harmed in that he wasn't allowed to take the test. Therefore, he wouldn't be on any promotional list. He made the assertion in court that it was unfair that he would be required to sit for a test where there was limited notice, expressing the view that he thought others had had advanced notice that the Board would ask for the test and he made an argument to the judge that he would ultimately succeed on his underlying claim that he would be irreparably harmed if the test went forward. The question was do you leave it in the judges' hands as ultimately occurred or do you try to resolve it some way. There was a suggestion by his counsel, which was communicated but not embraced by the County attorney on behalf of the Commissioner of Personnel, for whatever reason.

Councilwoman Low-Hogan asked if that was the Wednesday morning proposed solution.

John Edwards said Yes.

Councilwoman Low-Hogan asked John Edwards to review again what that was again. If the Town, could you repeat that please.

John Edwards said initially the suggestion with proposal was that he would withdraw his Order to Show Cause, which is just an expedited motion, seeking to stay the test, which would of put it pass Saturday and effectively cancelled the test, if the Town consented to withdrawing its request for the test with the understanding that the test would be given in March 2011. So, it is a question whether it is a request to withdraw or a request to delay. I told them that I would not take that back to the Town, unless it was, with the further understanding that irrespective of the status of the litigation, the next time the test is given, March 2011 as we were told, that he waived his right to seek to stay that test again if the case were ongoing.

Councilwoman Low-Hogan asked if they agreed to that.

John Edwards said the Chief agreed to that but the County did not.

Councilwoman Low-Hogan said then the situation is if the County didn't agree to it, then that agreement was not going to happen?

John Edwards said, well it's a stipulation and all the parties represented in the lawsuit are required to join in the stipulation. The judge expressed a view, frankly, that the County is concerned that it might suffer or be exposed to some damages on behalf of those officers who were studying for the test and would be denied the test and the County wanted the Town to indemnify the County. In somewhat colorful language, I told the County, we are not indemnifying you and it broke down at that point in time. The court went on to state, in its decision, citing a Federal case, that there is no property interest in the examination, it's simply a step in the process leading to a right. Therefore, the County had no legitimate concern over damages. The County still did not agree.

Councilwoman Low-Hogan said now just to go back, so when the three parties could not agree is that when you called?

John Edwards said there are actually four parties because Mr. Baumgartner was there for the Seidels as well and he also did not agree.

Councilwoman Low-Hogan - When the four parties could not agree is that when you called; tired to call Supervisor Whalen but you couldn't get a hold of him?

John Edwards said that is correct.

Councilwoman Low-Hogan asked then who did you call.

John Edwards said, I spoke to Mr. Troy.

Councilwoman Low-Hogan - Did somebody refer you to him?

John Edwards said No. I made the decision to call him.

Councilwoman Low-Hogan said you made the decision to call the Deputy Supervisor. Deputy Supervisor Denis Troy said what or you said what to him, in general terms. I'm really sorry if these details These things, we don't know. Can I tell you, this is very complex and we don't know these things. Really, if we are expected to do the right thing, we have to know the details. So, you said what, in general terms, to Denis Troy.

John Edwards said, I told him exactly what I just told you, in terms of how the process developed, what the offer was that had been made and what I had told Mr. Klein in response regarding in making the phone call.

Councilwoman Low-Hogan asked, the choice before Denis Troy was to agree to cancel the test? What was his choice at that point?

John Edwards said, Yes or No.

Councilwoman Low-Hogan asked what he said.

John Edwards - he said to make the agreement.

Councilwoman Low-Hogan asked if the Supervisor was involved in any of this at all, at this point.

John Edwards said, No other than then the phone call which went to voicemail, No.

Councilwoman Low-Hogan asked so when Denis Troy said cancellthe test.

John Edwards - No, he said make the deal.

Councilwoman Low-Hogan repeated, he said make the deal. Could you, I'm sorry... can you, I'm sorry... the deal was what? That you were to make. Just repeat that for me again, I'm sorry. I'm sorry, John.

John Edwards said that if the Chief agreed to withdraw his application, then before the court, seeking to stay the test, which would have effectively have cancelled the test, because the test was a matter of days away. If he would agree to do that, the Town would withdraw its request for the test with the expressed understanding that when the test was next to be given in March 2011, according to the cycle as reported by the Assistant County Attorney, that he would waive his right to challenge that test (to stay that test again) and that the test would be given whether the pending litigation were concluded or otherwise. That was then taken to the other parties present and the County objected and Mr. Baumgartner, on behalf of his clients, objected. In the absence of an agreement, there is no agreement. So, the Court then took the matter under advisement, deliberated her decision, and made a decision, which is embodied in the benched determination that has been widely circulated.

Councilwoman Low-Hogan said alright I think those are my questions for now.

Mr. Baumgartner asked if he could make a comment on that.

Supervisor Whalen said, yes Mr. Baumgartner.

Mr. Baumgartner said thank you. First of all just for clarification, with respect to the lawsuit, I represent the Seidels. It is the Chief who brought the members of the PBA into the lawsuit, when he attempted to cancel the exam, successfully as it turn out. Those people were not represented at that point in time. As the PBA council, I tried represent those people who had not gotten any notice on the lawsuit. To the matter, a court cannot act without an application. The Chief's attorney made two applications. One was for a temporary Restraining Order and the other was for Preliminary Injunction. Without those applications, there is no jurisdiction for the court to act without anything. So, what the court did, it said the Town of Orangetown has agreed to withdraw its request for the promotional exam. Chief Nulty has agreed that if the Town withdraws its request for the examination, he will withdraw his motion for a Temporary Restraining Order and a Preliminary Injunction. Without that Preliminary Injunction and Temporary Restraining Order request by the Chief there was no authority for the court to act other than then the agreement made between Town and the Chief. No authority. No jurisdiction.

John Edwards said, well Joe that's an argument you made and the court rejected. So

Mr. Baumgartner said, it's right here in the transcript, it's based on an agreement between the Town and the Chief.

John Edwards said then you should have taken that appeal I guess. Rather than having people sit around for a day waiting when you and the County attorney had your own private agreement that you were going to wait for the last moment and file a Notice of Intention to file an Appeal, thereby effecting an automatic stay, which you thought would work, but which just as still at the Appellate Division soundly rejected at 11:15 on Friday night.

Mr. Baumgartner said the only point that I will make to that is if the County attorney had wanted to short sheet anybody he would have just dropped it in the mailbox and continued with the test without any notice to anybody. He gave everybody notice as to what he was doing. He was fair, which is more than I can say for all the notices I got after 5 o'clock from Lance Klein.

John Edwards said, he was fair when he sent the letter after 5 o'clock on Thursday saying he would be going to Brooklyn not to White Plains, not to Rockland County to Brooklyn, 45 Monroe Place. He sent that letter. I, on behalf of the Town, called his office Friday, no less than six times, six times requesting when is he going down? When is he going down?..... to hear he is in a meeting, he is in a meeting and at 1:30 he is in lunch.

Mr. Baumgartner said his letter also said he would apprise you of the time when he got it. So if you didn't get apprised, he didn't set a time.

John Edwards said listen Joe it was calculated and frankly you were part of it.

Mr. Baumgartner said the whole thing was calculated but by the Town and the Chief. Not by anybody else.

Supervisor Whalen asked Nancy if she had any further questions before we re-pass the resolution.

Councilwoman Low-Hogan said, No.

Councilman Maturo - We're part-time here on the Town Board and we have spoken about this before, I think you owe it to the people in this room and the people in the public for your statement on what happen and how it is going to be avoided, how you are going to fix this going forward. We have a resolution that admits there was some sort of error and again I call it mismanagement at best. I have some serious concerns about notification of the Board when there is any sort of issue like this. It has to come out of your office, Paul. It's your the Deputy Supervisor, it's John Edwards but at the end of the day, it doesn't matter if I'm in China or in Antarctica or I'm down the street, the responsibility still lies on me because I am an elected official. Number three, this is why it is so important for us to have a list of responsibilities for the deputies because it is true maybe not every issue can be answered appropriately by the deputies and this is why as Nancy has asked many times to have a list of responsibilities that we can reasonably expect the deputies to answer as opposed to you. In the event of John not being able to get to a deputy, maybe on a particular issue, maybe one like this has to come from you. So, anyway I going to leave you at that because my view at this moment, this is, at best, mismanagement and Paul, I really think you should make a comment to all of us.

Supervisor Whalen asked Councilman Maturo what he means by mismanagement.

Councilman Maturo said fundamentally, we been going through this all night but fundamentally there is serious miscommunications and again it's the end of day, John and Denis, as Deputy Supervisor, work for you.

Councilman Diviny said I'll be brief. I made the motion to have the test on January 26, 2010, it was seconded, we voted on it, we said we would have the test. I never waivered from the intention to have the test. I think it is to protect the Town if the Chief is not successful, in terms of this lawsuit. We need a list to be there. That was the intention of the Town Board. I don't think we should entertain any requests from Lance Klein and I think we should pass this resolution right now.

RESOLUTION NO. 190

ROCKLAND COUNTY PERSONNEL REQUEST POLICE CHIEF EXAM

Under new business, Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and on a roll call was adopted:

WHEREAS, the Town is presently involved in litigation in the Rockland County Supreme Court, concerning the May 13, 1997 appointment of Police Chief Kevin Nulty to the permanent civil service title of Chief of Police; and

WHEREAS, there currently is no valid civil service list for the position of Chief of Police from which any appointment could be made in the event there were to be a vacancy in that position; and

WHEREAS, the Town Board by previous resolution had expressed the view that it is in the best interests of the Town for there to be a valid promotional list available to it in the event a vacancy should occur in the position, whereupon the County of Rockland Department of Personnel scheduled and noticed such examination to be given on March 6, 2010 ; and

WHEREAS, on application of Chief Nulty, brought by Order to Show Cause, Justice Linda Jamieson, N.Y.S. Supreme Court, made and issued a Bench Determination cancelling March 6 promotional examination, No. 77-752, insofar as it applied to the position of Chief of Police of the Town of Orangetown; and

Resolution No. 190 - Continued

WHEREAS, it appears from the transcript reflecting the Bench Determination of Justice Jamieson that her decision was based, in whole, or in part, on the representation of the Town Attorney that the Town would consent to withdraw its request for the said promotional examination, subject to certain condition[s]; and

WHEREAS, the Town Board, in fact, continues to be of the view that the existence of a promotional list for the position of Chief of Police, is in the best interests of the Town, and that the Town Attorney was misinformed when he made the referenced representation,

NOW THEREFORE, BE IT RESOLVED, that the Town Supervisor, or his designee, is hereby authorized and directed to request of the Rockland County Department of Personnel, that a promotional examination be conducted for the position of Chief of Police, Town of Orangetown, said examination to be at the earliest opportunity.

Ayes: Councilpersons Maturo, Diviny
Supervisor Whalen
Noes: Councilwoman Low-Hogan
Absent: Councilman Troy

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RESOLUTION NO. 191**ENTERED AUDIT**

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Town Board entered the Audit Meeting at 9:12 p.m.

Aye: Councilpersons Maturo, Diviny, Low-Hogan
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 192**PAY VOUCHERS**

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Finance Office is hereby authorized to pay vouchers for the General Fund, Town Outside Village, Blue Hill, Broadacres, Highway, Sewer, Capital Projects, Risk Retention, and Special Parking Funds for a total amount of \$1,542,823.33.

Ayes: Councilpersons Maturo, Diviny, Low-Hogan
Supervisor Whalen
Noes: None
Absent: Councilman Troy

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RESOLUTION NO. 193**ADJOURNMENT/MEMORY**

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Town Board adjourned, in memory of Edward J. Kall, Blauvelt and Winifred Daly, Pearl River, at 9:30 p.m.

Ayes: Councilpersons Maturo, Diviny, Low-Hogan
Supervisor Whalen
Noes: None
Absent: Councilman Troy

Charlotte Madigan, Town Clerk