

May 27, 2015

The Town Board of the Town of Lyons met for a meeting on Wed. May 27, 2015, at 7:00 p.m. in the Town Board meeting room.

Present: Brian Manktelow, Supervisor
Dan LaGasse, Councilman
Nancy Collins, Councilwoman
Ralph D'Amato, Councilman
Phil DeSain, Councilman
Sal Colatarci, Town Clerk

Also Present: Mayor Terry VanStean, Trustees, Dennis Alvaro, Ernie Evangelist, Sean Dobbins, Jim Blandino, Village Clerk Denise Darcangelis, Jim Wedman, Donna DeWolf, Bruce and Sharon Lubitow, Joan Smith, Angie Cinelli, Brian Engels, Dave Garwood, Frank Quinn, Jeff Rios, Bob Darcangelis, Aaron DiSanto, Crystal Wadhams, Tim Moore, Sam, Toner, Bob Milliman, several students from Lyons High School to attend a local government meeting to satisfy a class requirement.

Absent:

This meeting was duly noticed by contacting the Times of Wayne newspaper, as well as posting a notice on the Town bulletin board and on the Town's web site.

All stood for Pledge of Allegiance.

Before beginning the meeting, Supervisor Manktelow thanked everyone who participated in any way, in the Memorial day Festivities earlier in the week.

Supervisor Manktelow announced that the first of two public hearings would now be addressed. The first concerns the establishment of a Fire District in the Town and the Village of Lyons. Town Clerk Colatarci read the Notice of Public Hearing, after which, Supervisor Manktelow stated the hearing would remain open until all comments had been heard. Mr. Manktelow also announced that an advertised joint meeting on the subject would be held following this public hearing. Attorney Dave Garwood explained the purpose of a joint fire district and how the district would be run and operated. He explained the duties of the 5 fire commissioners, appointed by the Town Board and what the created district can and can not do.

At 7:25 p.m., Councilman D'Amato moved to close the Joint Public Hearing. Motion seconded by Councilwoman Collins. Vote:

Councilman D'Amato voting aye
Councilwoman Collins voting aye
Councilman DeSain voting aye
Councilman LaGasse voting aye
Supervisor Manktelow voting aye

As the Village Board was not ready to act on the proposed joint fire district, the scheduled meeting between the Boards, at 8 p.m., would need to be rescheduled for a later date, yet to be determined.

Meanwhile, Town Clerk Colatarci then read the legal notice concerning Public Hearing #2 regarding the agreement with the Village of Lyons and proposed 20 year lease by the Town to the Wayne County water and Sewer Authority of both the Lyons waste water collection and transmission system and the Lyons municipal water transmission system including many of the assets associated with both. This hearing would remain open until all comments have been heard.

At 7:20 p.m., Councilman DeSain moved to close the hearing. Motion seconded by Councilman LaGasse. Vote:

Councilman DeSain voting aye
Councilman LaGasse voting aye
Councilman D'Amato voting aye
Councilwoman Collins voting aye
Supervisor Manktelow voting aye

Members of the Village then left the meeting, with the exception of Trustee Jim Blandino who remained.

Councilman D'Amato moved to accept the minutes from the April 29, May 6, and May 12, 2015 meetings/workshops. Motion seconded by Councilwoman Collins. Vote:

Councilman DeSain voting aye
Councilwoman Collins voting aye
Councilman D'Amato voting aye
Councilman LaGasse voting aye
Supervisor Manktelow voting aye

Councilman LaGasse then moved to approve payment of General Fund vouchers #178 through #224 totaling \$222,036.78 and Highway Fund vouchers #80 through #93 totaling \$11,222.74
Motion seconded by Councilman DeSain. Vote:

Councilman LaGasse voting aye
Councilman DeSain voting aye
Councilman D'Amato voting aye
Councilwoman Collins voting aye
Supervisor Manktelow voting aye

Supervisor Manktelow stated that the Town Board has been invited to take part in the Peppermint Days parade on July 18. Line up is at 5 p.m.

Department reports were heard. In his written report, Ambulance Administrator Paul Fera reported that the ambulance responded to 108 calls in the month of April 2015.

In her written report, Assessor Tina McQuillen reported that it has been quiet in her office this month. She stated she had a recent meeting with other County Assessors to discuss vacant land/farm land values across the County. She explained that it's important to have uniformity with the way land is valued.

Upon the request of Assessor McQuillen, Councilwoman Collins moved that the Town of Lyons supports the plan to proceed with a Town-wide reassessment to begin in 2016. Motion seconded by Councilman LaGasse. Vote:

Councilwoman Collins voting aye
Councilman LaGasse voting aye
Councilman DeSain voting aye
Councilman D'Amato voting aye
Supervisor Manktelow voting aye

In his written report, Code Enforcement Officer Bob Darcangelis reported that during the month of April he issued 6 building permits, did 4 C of O inspections, and 3 C of C inspections.

Acting Highway Supt. Tim Moore then introduced Mr. Sam Toner, the newest member of the Town Highway Dept. Mr. Toner began duties May 27.
Mr. Moore also gave a brief synopsis of what the Highway department has been doing the past month including mechanical work on the trucks and will begin oil and stoning with neighboring Towns next week.

Councilman LaGasse then moved to Authorizing the Town of Lyons and the Town Highway Department to assist with an alternate plan of drainage along the west side of Sohn Alloway Road to ease water issues at Colony Reality LLC, should the need arise.

Motion seconded by Councilman D'Amato. Vote:

Councilman LaGasse voting aye
Councilman D'Amato voting aye
Councilwoman Collins voting aye
Councilman DeSain voting aye
Supervisor Manktelow voting aye

Councilman D'Amato then moved to authorize the Town Supervisor to sign an agreement with Stuart Brown Associates at a cost of \$1,500.00 to assist the Town in preparing a Pre-Development Planning Grant to allow the Town to undertake a study to investigate concerns and evaluate potential improvements to the public water system in Lyons. Motion seconded by Councilman DeSain. Vote:

Councilman D'Amato voting aye
Councilman DeSain voting aye
Councilwoman Collins voting aye
Councilman LaGasse voting aye
Supervisor Manktelow voting aye

Town Attorney Tony Villani then explained a 3-step approach the Town Board needs to take in order to complete the agreement with the Village of Lyons and proposed 20 year lease by the Town to the Wayne County water and Sewer Authority of both the Lyons wastewater collection and transmission system and the Lyons water transmission system.

First, the Town Board needs to adopt the SEQRA Negative Declaration of the water and sewer conveyance and lease to the WCWSA.

Second, the Board needs to pass a resolution authorizing the Town Supervisor to sign the 5-G agreement with the Village of Lyons.

Third, authorize the Supervisor to sign a lease agreement with the Water Authority. This must be signed simultaneously with the signing of the 5-G agreement with the Village.

Upon the above suggestions, Councilman LaGasse moved to adopt the SEQRA Negative Declaration. Motion seconded by Councilman D'Amato, Vote:

Councilman LaGasse voting aye
Councilman D'Amato voting aye
Councilman DeSain voting aye
Councilwoman Collins voting aye
Supervisor Manktelow voting aye

Full resolution follows:

**TOWN OF LYONS
VILLAGE OF LYONS WATER AND SEWER CONVEYANCE
TOWN OF LYONS LEASE TO WCWSA
SEQRA Negative Declaration**

May 27, 2015

WHEREAS, the Village of Lyons is in the process of dissolution pursuant to Article 17-A of the General Municipal Law; and

WHEREAS, the Village of Lyons has agreed to transfer its water and sewer operations to the Town of Lyons, effective May 31, 2015, and

WHEREAS, the Wayne County Water and Sewer Authority has agreed to lease the water and sewer infrastructure from the Town of Lyons in order to continue said water and sewer service to residents of the Village of Lyons, and

WHEREAS, as part of the overall agreement, water service currently provided to town water districts by the village of Lyons will be continued by the WCWSA:

BE IT RESOLVED, that the Town of Lyons, does hereby find and resolve as follows:

1. The proposed action is subject to the State Environmental Quality Review Act.
2. The proposed action does not involve a Federal agency.
3. The proposed action involves other state agencies.
4. Using the information available and comparing it with the thresholds set forth in section 6 NYCRR 617.4, the action is found to have a preliminary classification of Unlisted.
5. As an Unlisted action, the Short Form EAF (environmental assessment form) has been prepared by the Applicant to determine the significance of the proposed action.

6. The proposed action is not located in a coastal area.
7. The proposed action is not located in an agricultural district.
8. An uncoordinated review for Unlisted actions involving more than one agency has been performed, subject to 617.6 (b)(4).
9. More than one agency is involved, and the Town of Lyons is the lead agent.
10. The Town of Lyons hereby determines that the proposed action will not result in any significant adverse environmental impacts, a Negative Declaration is declared, and the Town hereby directs the Clerk to immediately file the determination in accordance with section 6 NYCRR 617.12.
11. In reaching this finding, the Town has:
 - (a) Considered the action as defined in sections 6 NYCRR 617.2 (b) and 617.3 (g),
 - (b) Reviewed the EAF, the criteria contained in subdivision 6 NYCRR 617.7 (c) and any other supporting information to identify the relevant areas of environmental concern,
 - (c) Thoroughly analyzed the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and,
 - (d) Set forth its determination of significance in this resolution, in addition to the corresponding long environmental assessment form.
12. In determining significance, the Town has determined whether the proposed Unlisted Action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action compared against the criteria in 6 NYCRR 617. The criteria considered indicators of significant adverse impacts on the environment were:
 - (a) A substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
 - (b) The removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant wildlife habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to the natural resources;
 - (c) The impairment of the environmental characteristics of a critical environmental area as designated pursuant to section 617.14 (g);
 - (d) The creation of a material conflict with a community=s current plans or goals as officially approved or adopted;

- (e) The impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- (f) A major change in the use of either the quantity or type of energy;
- (g) The creation of a hazard to human health;
- (h) A substantial change in the use or intensity of use, of land including agricultural, open space or recreational resources or in its capacity to support existing uses;
- (i) The encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- (j) The creation of material demand for other actions that would result in one or the above consequences;

(k) Changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(l) Two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria of this subdivision.

13. For the purposes of determining whether an action may cause one of the consequences listed above, the Town considered reasonably related long-term, short-term, direct, indirect, and cumulative impacts, including other simultaneous or subsequent actions, which were;

(n) Included in any long range plan of which the action under consideration is a part;

(o) Likely to be undertaken as a result thereof, or

(p) Dependent thereon.

14. In addition, the Town considered the significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(q) Its setting (e.g., urban or rural);

(r) Its probability of occurrence;

(s) Its duration;

(t) Its irreversibility;

(u) Its geographic scope;

(v) Its magnitude; and

(w) The number of people affected.

Councilman D'Amato then moved to authorize the Supervisor to sign the 5-G agreement with the Village and simultaneously sign the lease agreement with the Wayne County water and sewer Authority. Motion seconded by Councilman lagasse. Vote:

Councilman D'Amato voting aye
Councilman LaGasse voting aye
Councilwoman Collins voting aye
Councilman DeSain voting aye
Supervisor Manktelow voting aye.

The full resolution follows:

GENERAL MUNICIPAL LAW 5-G AGREEMENT
between the
VILLAGE OF LYONS
and the
TOWN OF LYONS

This Agreement is entered into on the dates approved by both boards and is between the **Village of Lyons**, a municipal corporation, with offices at Village Hall, William Street, Lyons, NY 14489 (the AVillage@), and the **Town of Lyons**, a municipal corporation, with offices at 43 Phelps Street, Lyons, NY 14489 (the ATown@) on behalf of the present users of village water and sewer services within the present corporate limits of the Village.

WHEREAS, the voters of the Village have filed and affirmatively approved a petition for dissolution and approved the plan of dissolution adopted by the Village Board which plan calls for the dissolution of the Village on December 31, 2015, and

WHEREAS, the Village provides and has traditionally provided water and sewer services to properties within its corporate limits, and

WHEREAS, the Village budget year runs from June 1 through May 31 of each calendar year, and

WHEREAS, the Town is aware that the current service area for water and sewer would include only part of the Town, necessitating the creation of districts as more particularly defined in Articles 12 and 12-A of the New York Town Law, and

WHEREAS, the Town has been advised by the New York Department of State that such districts as are envisioned and authorized by Articles 12 and 12-A of the Town Law are created by operation of law upon the dissolution of the Village, and

WHEREAS, the Village and Town have determined that the public interest would be best served by a transfer of the water and sewer functions conterminous with the Village budget cycle, and

WHEREAS, the Town has secured the agreement of the Wayne County Water and Sewer Authority to operate the transferred water and sewer systems pursuant to a lease, and

WHEREAS, the Town has determined that it is in the best interest of the residents in the Districts to be formed to lease the Districts= water and sewer improvements to the Authority so that the Authority can operate and maintain such improvements for the benefit of the residents in the Districts and provide water and sewer services to users in the Districts; and

WHEREAS, the Authority is willing and able to lease the improvements, to accept the other assets held by the Districts and to operate and maintain such improvements and to provide sewer and water services to the users in the Districts; and

WHEREAS, the Authority currently supplies water to the Village pursuant to a supply agreement between the Authority and the Village (the AExisting Village Supply Agreement@) dated July 1, 2011. The Authority, Town and Village intend that the terms, covenants and conditions of the Existing Village Supply Agreement shall be amended and superseded by the terms, covenants and conditions of this Agreement, and

WHEREAS, it is the intention of the Town and Authority assess the cost of building, operating and maintaining the system on a benefit basis so that all charges will be a function of the water and sewer rates established by the Authority,

Accordingly, the parties hereto desire to enter into a General Municipal Law 5-G agreement, whereby the Village hereby transfers all the water and sewer facilities of the Village, under the terms and conditions specified in this Agreement.

Therefore, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the parties agree as follows:

1. Transfer of Facilities.

Upon the approval and signing of this agreement, the Village hereby transfers to the Town, (A) the entire operating plant, hydrants, water pumping, storage, transmission and distribution systems of the Village (including, but not limited to, any and all conduits, pipes, valves, casings, meters, pumps, tanks and vaults owned by the Village) and (B) the entire sewer system of the Village consisting of all pumping stations, collection, conveyance and treatment systems of the Village including, without limitation, those of the Former Village Water District and those of the Former Village Sewer District (collectively the AVillage Facilities@), and extensions thereto, which are now and may in the future be listed in attached inventories and as shown on attached maps, together with any replacements, additions, betterments and improvements that may hereafter be furnished and installed in or by the Town or extension thereto during the term of this Agreement, together with all of the Village=s interests in real property of any kind or nature to the extent assignable (including, but not limited to, any and all easements, whether temporary or permanent and/or exclusive or non-exclusive, licenses and leases in favor of the Village), (collectively the Village Facilities are referred to as the AFacilities@).

2. Books and Accounts; Transfer of Rights to Collect for Unbilled Water and Sewer; Village Liabilities.

A. The Village agrees to provide copies to the Town of all books, accounts, records, and appraisals relating to the Facilities and to assist in the transition of customers to the Town and Authority with adequate time for the Authority to begin billing such customers on their next billing date following the Commencement Date.

B. As of the Effective Date, the Village shall transfer to the Town and Authority the Village's right to bill customers in the village service areas for water consumed and sewer services rendered from the date of the last billing through the effective Date and continuing through the term of this transfer. The Town and its assignees shall have the right to bill and collect for such water consumed and sewer services in its own name and to carry out its obligations under this transfer.

C. The parties acknowledge and agree that the Town does not, nor will it assume or become liable for, any of the Village's liabilities or debt service obligations including, without limitation, those of either the Former Village Water District or the Former Village Sewer District, of any kind or nature at any time existing or asserted, whether fixed, contingent or otherwise, except as specifically imposed by Article 17-A of the General Municipal Law.

D. Upon the effective date hereof, the Village shall cease providing water and sewer services to those residents currently within its corporate limits, which services shall be continued by the Town or its assignees.

E. The Village shall cooperate with the Town in obtaining and maintaining all state, Federal, and local permits and licenses required for ownership and operation of the Facilities, including without limitation, any environmental permits as delineated in Exhibit A attached hereto and made a part hereof. The Town shall be responsible for the payment of all regulatory and governmental fees associated with ownership and operation of the Facilities.

F. The Village agrees to cooperate in the transfer of any permits, including State Pollutant Discharge Elimination System (SPDES) and water supply permits, as required by applicable law to enable the Town and its assignees to provide water and sewer services to the Districts. The cost of renewing such permits shall be borne by the Town or its assignees.

G. The Town and Village agree that they shall be responsible for any compliance with New York State Environmental Quality Review (SEQR) that is required or advisable in order to enter into or carry out the terms of this Agreement.

H. The Village represents and warrants to the Town that it owns or has the right to use all the Facilities, including, without limitation, the Village Facilities and any interests in real property, in the manner used to provide the water and sewer services it has been providing and that are being leased to and assumed by the Town hereunder. The Village agrees to indemnify, defend and hold harmless the Town from any claim arising out of a breach of the foregoing warranty.

I. The Village represents and warrants to the Town that the Village has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant to the Town or its assignees in performing its duties and obligations hereunder, including all operating reports, laboratory reports, monitoring documentation, and any other relevant data and reports relative to the operation, maintenance and repair of the Facilities. The Village further represents and warrants that there are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against the Facilities, including without limitation those of the Former Village Sewer District and/or the Wastewater Treatment Plant, and no judgments, decrees, orders, rulings, writs or is conditioned upon the Town adopting and enforcing a sewer use ordinance acceptable to the Authority. The Town agrees and covenants that it will adopt such a sewer use ordinance prior to the Commencement Date and will adopt future amendments to such ordinance as reasonably requested by the Authority. The Town further agrees and covenants that it will reasonably enforce such sewer use ordinance so long as wastewater from the Sewer Districts is being accepted for treatment by the Authority.

J. The Village agrees not to repeal its any of its water or sewer use ordinances and allow such ordinances to remain in effect until replaced by the Town or terminated pursuant to the provisions of Article 17-A of the General Municipal Law.

3. Miscellaneous.

Assignment. Neither party may assign its rights or obligations under this Agreement, unless the written consent of the other party hereto is obtained.

Amendment. This Agreement may be amended or modified only by a subsequent written document executed by all parties hereto.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Authorization. The Village represents and warrants to the Town that it has taken all actions necessary or required to be taken by it, including any referendum necessary, and that the Village has full power and authority necessary to execute this Agreement and perform in accordance with its terms.

No Outstanding Violations. The Village represents and warrants to the Town that there are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened with respect to the Village Facilities.

Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all previous discussions, representations, understandings, and agreements including specifically each of the Existing Water District Lease and the Existing Village Water Supply Agreement such that the terms, covenants and conditions thereof are superseded and replaced by the terms, covenants and conditions of this Agreement.

Force Majeure. If performance (other than payment) under this Agreement by any of the parties hereto is prevented or delayed by reason of any cause beyond the control of the party affected, and which cannot be overcome by reasonable due diligence, such affected party shall be excused from such performance to the extent that it is necessarily prevented or delayed thereby, during the period of any such cause.

Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The sole and exclusive forum for the determination of any question of law or fact to be determined in any judicial proceeding relating to this Agreement shall be the Supreme Court of the State of New York sitting in Wayne County, New York or the federal district court having jurisdiction for Wayne County, New York.

Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such unenforceable provision the parties shall negotiate to add a provision as similar in terms to such unenforceable provision as may be possible.

Non-Waiver. Failure by any party at any time to require strict performance of any of the provisions herein shall not waive or diminish a party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as any further or continuing waiver of any other term, provision or condition of this Agreement. A party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the party making such waiver.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent that it be effective on the day and year first above written.

At 7:55 p.m., Councilman D'Amato moved to go into executive session to discuss an employment matter as well as a contract negotiation matter. Motion seconded by Councilman DeSain. Vote:

Councilman D'Amato voting aye
Councilman DeSain voting aye
Councilman LaGasse voting aye
Councilwoman Collins voting aye
Supervisor Manktelow voting aye

At 9:25 p.m., Councilman LaGasse moved to come out of executive session. Motion seconded by Councilwoman Collins. Vote:

Councilman LaGasse voting aye
Councilwoman Collins voting aye
Councilman DeSain voting aye
Councilman D'Amato voting aye
Supervisor Manktelow voting aye

As there was no further business, the meeting was adjourned.

Sal J. Colatarci

Lyons Town Clerk

