

The Bergen Town Board convened in a regular session at 7:30 p.m. in the Town Hall with Supervisor Cunningham presiding.

PRESENT:

Supervisor Donald Cunningham
Councilman Barry Miller
Councilman Hugh McCartney
Councilman Joe Nenni
Councilman Brian Stone

ALSO PRESENT:

Michele M. Smith, Town Clerk
Dave Roggow, Highway Superintendent
David Mason, ZEO/CEO

OTHER ATTENDEES:

Patricia Reinhold, NYS DOT Resident Engineer
Paul Cummings, Fire Chief
Mike Crosier
Grace Gallivan

PRAYER

PLEDGE OF ALLEGIANCE TO THE FLAG

Emergency Response Protocols: Discussion of accident on March 24th at Rt. 33 and W. Bergen Roads and the request for assistance from the Town Highway Department with a gas spill. Patricia Reinhold attended to answer any questions pertaining to DOT protocols.

MINUTES: *Councilman McCartney made a motion to approve the minutes of March 22, 2011 with correction; seconded by Councilman Nenni and it carried by a vote 4 -0. Councilman Stone abstained*

COMMUNICATIONS:

Supervisors Reports for January, February and March 2011
Town Clerk's Report for March 2011
Cover letter and Resolution for Amendment to Retail Lease Agreement from MCWA
Email from Village of Bergen, Re: Request agreement to share ZEO/CEO as back up
Summary of Mowing Bids
2010 Census data provided by Genesee County Planning Department
Draft of Park Use Application & Rules provided by Parks Committee
Information from Sunnking Electronics Recycling, Re: Collection & Recycling CEE Material
Resolution & Contract for Shared Services
Letter from NYS D.O.T., Re: Vegetation Management Program for 2011
Letter from USDA, Re: Peachey Road Water District Funding Application

REPORTS:

BUILDING & ZONING: Manufactured Housing Park License for Mapledale Estates: still waiting on permit. Dave is looking into a state bid laptop and is getting more information on the BAS program.
BUILDING COMMITTEE: Councilman Miller reported that the lights were installed at 15 S. Lake Ave. Wilcox Building Sale The Town Attorney said there should not be a problem with the sale of Wilcox building without driveway, the Village Planning Board will have to approve it. He has two quotes for Window and doors for the old town hall and it waiting for one more.
PARKS COMMITTEE: Councilman Nenni updated the board on draft policies for Robins Brook Park and the Fire Hall Soccer Field. Next committee meeting is April 28, 2011
TOWN CLERK'S MARCH 2011 REPORT AND SUPERVISORS REPORTS FOR JANUARY, FEBRUARY, AND MARCH 2011: *Councilman McCartney made a motion to file the Town Clerk's March 2011 report and Supervisor's reports; seconded by Councilman Stone and it carried by a vote 5-0.*

HIGHWAY: Superintendent Roggow reported that the DOT work permit is filed for the Peachey Road Water District. Contract for Shared Services Resolution # 8-2011 *Councilman Nenni offered Resolution #8-2011 the Contract for Shared Services; seconded by Councilman McCartney and it carried by a vote 5-0.*

Town of Bergen
Resolution # 8 - 2011
Contract for Shared Services

Renting, leasing of Highway machinery and equipment, exchanging, borrowing equipment, borrowing or lending of material and supplies.

At a regular meeting of the Town Board of the **Town of Bergen** duly held at the Town Hall in such Town on the 12th day, of March, 2011 the following resolution was adopted:

A resolution authorizing the Superintendent of Highways to sign an agreement on behalf o the **Town of Bergen** which authorizes the Superintendent to directly contract with the Superintendents or persons holding similar public office in other municipalities who possess similar authorization for borrowing or lending of materials and supplies and the exchanging , leasing, renting of machinery and equipment, including the operators thereof, for the purpose of aiding the Superintendent in the performance of his/her duties.

WHEREAS, all municipalities, including the **Town of Bergen** have the power and authority to contract for the purpose of renting, leasing, and exchanging or borrowing or machinery and equipment, with or without operators, with other municipalities, and

WHEREAS, it is hereby determined that the **Town of Bergen** and other municipalities have machinery and equipment which is not used at all times but lie idle during certain periods, and

WHEREAS, it is determined that the **Town of Bergen** and other municipalities often have materials and supplies on hand which are not immediately needed, and

WHEREAS, it is herby determined that by renting, borrowing, exchanging or leasing of highway machinery and equipment and the borrowing or lending of materials and supplies, the **Town of Bergen** and other municipalities may avoid the necessity of purchasing certain needed highway machinery and equipment and the purchasing of or keeping a large inventory of certain extra materials and supplies, thereby saving the taxpayers money, and

WHEREAS, it is recognized and determined, from a practical working arrangement, that no program of borrowing, exchanging, leasing or renting of highway machinery and equipment or individual arrangement or agreement has to receive prior approval by the Town Board and the governing board of each of the municipalities which may be parties to such agreements, since such agreements must often be made on short notice and at times when governing boards are not in session, and

WHEREAS, it is incumbent upon each municipality to design a simple method whereby materials and supplies, equipment and machinery, including the operator thereof, may be quickly obtained with a minimum of paperwork and inconvenience and with a swift approval process, and

WHEREAS, it is the intent of this Town Board to give the Superintendent the authority to enter into renting, exchanging, borrowing and lending agreements with the persons serving in similar capacities in other municipalities without the necessity of obtaining the approval of the Town Board prior to the making of each individual agreement, and

WHEREAS, a standard contract has been prepared with is expected to be adopted and place into effect in other municipalities which contract will grand the person holding the position comparable to that of the Superintendent authority to make similar agreements, and

WHEREAS, it is hereby determined that it will be in the best interests of the Town of Bergen to be a party to such an agreement,

NOW THEREFORE BE IT RESOLVED that the Superintendent of Highways is hereby authorized to sign on behalf of the Town of Bergen the following contract.

HIGHWAY SHARED SERVICES AGREEMENT

#1. For the purpose of this contract, the following terms shall be defined as follows:

- A. "Municipality" shall mean any town which has agreed to be bound by contract of shared services identical in terms and effect with this contract and has filed a certified copy of a resolution to that effect with the designated filing agent as defined herein.
- B. "Designated Filing Agent" shall mean the town Clerk of said municipality.
- C. "Contract" shall mean the text of this agreement which is identical in terms and effect with similar agreements, notwithstanding that each such contract is signed only by the Superintendent of Highways of each participating municipality accepts the terms of the contract to the same degree and effect as if each Superintendent of Highways had signed each individual contract.
- D. "Shared Services" shall mean any service provided by one municipality for another municipality that is consistent with the purposes and intent of this contract and shall include but shall not be limited to:
 - I. the renting, exchanging or lending of highway machinery, tools and equipment, with or without operator;
 - II. the borrowing or lending of supplies between municipalities on a temporary basis conditioned upon the replacement of such supplies.
- E. "Superintendent" shall mean, in the case of a city, the head of the department of public works; in the case of a county, the county superintendent of highways or the person having the power and authority to perform duties generally performed by the county superintendent of highways; in the case of a town, the town superintendent of highways and/or superintendent of public works; in the case of a village, the superintendent of public works or mayor.

#2. The undersigned municipality has caused this agreement to be executed and to bind itself to the terms of this contract and it will consider this contract to be applicable to any municipality which has filed a similar contract in the office of the Town Clerk and which has sent a notice of such filing and a copy of this agreement to the Superintendents of all other participating Towns.

#3. the undersigned municipality by this agreement grants unto the Superintendent the authority to enter into any shared service agreement with any other municipality or other municipalities subject to the following terms and conditions;

- A. The **Town of Bergen** agrees to rent or exchange or borrow from any municipality any and all materials, machinery and equipment, with or without operators, which it may need for the purposes of the Town. The determination as to whether such machinery, with or without operators, is needed by the Town shall be made by the Superintendent.
- B. The **Town of Bergen** agrees to rent, exchange or lend to any municipality any and all materials, machinery and equipment, with or without operators, which such municipality may need for its purposes. The determination as to whether such machinery or material is available for renting, exchanging or lending shall be made by the Superintendent. In the event the Superintendent determines that it will be in the interests of the **Town of Bergen** to lend to any other municipality, the Superintendent is hereby authorized to lend to another municipality. The value of supplies or materials loaned to another municipality may be returned to the **Town of Bergen** by the borrowing municipality

in the form of similar types of amounts of materials or supplies as determined by mutual agreement of the respective Superintendents.

- C. An operator of equipment rented or loaned to another municipality, when operating such equipment for the borrowing municipality, shall be subject to the direction and control of the Superintendent of the borrowing municipality in relation to the manner in which the work is to be completed. However, the method by which the machine is to be operated shall be determined by the operator.
- D. When receiving the services of an operator with a machine or equipment, the receiving superintendent shall make no request of any operator which would be inconsistent with any labor agreement that exists for the benefit of the operator in the municipality by which the operator is employed.
- E. The lending municipality shall be liable for any negligent acts resulting from the operation of its machinery or equipment by its own operator. In the event damages are caused as a result of directions given to perform work, then the lending municipality shall be held harmless by the borrowing municipality.
- F. Each municipality shall remain fully responsible for its own employees, including salary, benefits and workers compensation.

#4. All machinery and the operator, for purposes of workers compensation, liability and any other relationship with their parties, except as provide in paragraph E of Section 3 of this agreement, shall be considered the machinery of and the employee of the municipality owning the machinery and equipment.

#5. In the event machinery or equipment being operated by and employee of the owning municipality is damaged or otherwise in need of repair while working for another municipality, the municipality owning the machinery or equipment is shall be responsible to make or pay for such repairs. In the event the machinery or equipment is operated by an employee of the borrowing, receiving or renting municipality, such municipality shall be responsible for such repairs.

#6. Any party to this contact may revoke such contract by sending a notice of such revocation to the town Clerk and a copy thereof to each participating superintendent as required by paragraph w of this contract.

#7. Any action take by the Superintendent pursuant to the provisions of this contract shall be consistent with the duties of such official and expenditures incurred shall not exceed the amounts set fore hint he Town budget for Highway purposes.

#8. If any provision of this agreement is deemed to be invalid or inoperative for any reason, the part shall be deemed modified to the extent necessary to make it valid and operative, or if it cannot be modified, then severed and the remainder of the contract shall continue in full force and effect as if the contract had been sighed or filed with the designated filing agent with the invalid portion so modified or eliminated.

#9. this term of the contact shall be from January 1 to December 31 of each year, renewed automatically unless otherwise terminated.

OLD BUSINESS:

Mowing Bids There were five mowing bids submitted for the 2011 mowing season: Chucks Landscaping \$7,200.00, James Palmer \$15,000.00, Harry Radley \$8,600.00, Craig Mowing & Landscaping \$6,700.00, Mangino's Maintenance Services \$11,011.00. *Councilman Stone made a motion to award the 2011 Mowing Contract to Craig Mowing & Landscaping for \$6,700.00; seconded by Councilman Nenni and it carried by a vote 5-0.*

Transfer Station The information from SUNNKING about recycling computers, televisions and other electronics was discussed. Councilman Stone will contact SUNNKING for more information.

Peachey Rd. Water District: MCWA Lease Agreement Amendment *Councilman Miller offered Resolution #9-2011 approve Supervisor Cunningham to sign the MCWA Lease Agreement Amendment; seconded by Councilman Nenni and it carried by vote 5-0.*

Town of Bergen
Resolution # 9 - 2011
Amendment No. 1 To The December 13, 1990
Retail Lease Agreement for Operation of Water Districts
Between the Town of Bergen and Monroe County Water Authority

On this 12th day of March, 2011, (Effective Date of Amendment No. 1), this Amendment No.1 (the "Amendment") to the December 13, 1990 Retail Lease Agreement for Operation of Water Districts to the Town of Bergen to Monroe County Water Authority (the "Agreement"), is made between the **Town of Bergen**, Genesee County, a New York municipal corporation, with its address at 13 South Lake Avenue, Bergen, New York 14416 (the "Town") and the **Monroe County Water Authority**, a public benefit corporation, with its offices at 475 Norris Drive, Rochester, New York (the "Authority").

The Town and the Authority agree as set forth below:

RECITALS:

WHEREAS, the Authority is operating the Town of Bergen's water system in accordance with the Retail Lease; and

WHEREAS, the Town of Bergen is seeking United States Department of Agriculture Rural Development (USDA-RD) financing for the Peachey Road Water District; and

WHEREAS, the USDA-RD requires that the Town of Bergen bid, install and own all water mains and appurtenances installed for the entire 38 year term of the loan to be granted to the Peachey Road Water District; and

WHEREAS, the USDA-RD requires that the Town of Bergen enter into an agreement with the Authority for the entire term of said loan; and

WHEREAS, the Town of Bergen has requested an extension to the Agreement with the Authority for a new forty (40) year term to satisfy USDA-RD's request.

NOW, THEREFORE, it is stipulated and agreed to amend the existing Agreement as follows:

A. Section I - Operation and Maintenance

1. After Article 1.4, add the following two Articles:

1.5 The District shall not sell or resell water either within or outside the District or the Town for any purpose whatsoever.

1.6 The Authority shall have the exclusive right to be the sole supplier of public water to all existing and future customers located within the Town.

B. Section II – Replacements, Additions, Betterments and Improvements

1. Renumber existing Article 2.4 as 2.5, existing 2.5 as 2.6, and existing 2.6 as 2.7.

2. After Article 2.3, add the following Article:

2.4 From time to time private developers will make Improvements pursuant to the terms of main extensions agreements ("Main Extension Agreements") entered into with the Authority. Legal title to any such Improvements shall be and remain in the Authority.

3. After Article 2.7, add the following Article:

2.8 In the event that the Districts desire to install a type or quality of pipe that meets AWWA and NSF Standards but is different than the Authority's specifications, the Authority is willing to allow the Districts to bid alternatives for price comparison purposes. The parties agree to discuss different alternatives, quality concerns, and the costs thereof. If the cost difference is not significant, the Authority's specifications and standards shall prevail. The District may proceed without the Authority's approval; however, any such constructions shall be subject to the District being responsible for the full costs of any future repairs to or replacements of the facilities. The Authority may, at its option, choose to participate financially in the construction to resolve the cost differences.

C. Section IV - Hydrants

1. Delete Articles 4.1 through 4.5.

2. Renumber existing Article 4.6 as 4.7.

3. Add the following Articles:

4.1 When replacing existing water mains in accordance with Section 4.3 hereof, the Authority will pay the costs thereof.

4.2 Upon the receipt of a certified copy of a resolution of the Town or the District requesting installation of hydrants and specifying the locations where the same are to be placed upon the mains of the District, the Authority will, at its initial cost and expense, but subject to reimbursement by the District as hereinafter provided, place and install the hydrants and hydrant connections in accordance with Section 4.3 hereof.

4.3 Hydrants shall only be installed on six-inch or larger diameter water mains at a minimum spacing interval of 500 feet. When hydrants are installed as part of a water main replacement project, the Authority shall, to the extent practicable and desirable for the District and the Authority, locate new hydrants reasonably close to the existing hydrant locations.

4.4 Hydrants installed less than 500 feet apart at the sole request of the District shall be considered "Additional Hydrants" installed for the purposes of private fire protection, as such term is defined in the Authority's Rules. Hydrants installed less than 500 feet apart by the Authority in its sole discretion and for its water supply purposes shall not be considered as private fire protection.

4.5 The Authority will bill the District for Additional Hydrants and hydrant connections at the actual installed cost thereof to the Authority, and the District will reimburse the Authority in the amount billed therefor within thirty (30) days of the invoice date. Legal title to such hydrants and hydrant connections shall be and remain in the Authority.

4.6 Hydrants installed as part of main extensions for real estate developments shall be installed by and at the expense of the real estate developer, and shall be owned by the Authority.

D. Section VII – Term of This Agreement and General Provisions

1. Delete Articles 7.2 through 7.4.
2. Renumber existing Article 7.5 as 7.3.
3. After Article 7.1, add the following Article:

7.2 The Effective Date of this Agreement shall mean the Effective Date of the Amendment.

E. Section VIII - Definitions

1. After Section VIII, add the following section:

IX. MISCELLANEOUS

- 9.1 This Agreement incorporates the entire agreement between the parties, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.
- 9.2 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 9.3 The parties hereto agree to execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purposes and intent of this Agreement.
- 9.4 This Agreement may not be amended, changed, modified, or altered except in a writing executed by the parties hereto.
- 9.5 No waiver of compliance with any provision or condition hereof, and no consent provided for herein, shall be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.
- 9.6 No party shall assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.
- 9.7 Subject to the provisions of Section 9.6, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature in any person not a party hereto.
- 9.8 All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such termination.
- 9.9 Any term or provision of this Agreement that is held to be invalid or unenforceable shall be interpreted by the courts such that it is valid and enforceable to the greatest extent possible and shall not render invalid or unenforceable, or otherwise affect, the remaining terms and provisions of this Agreement.

BILLS: The bills were presented for audit and totaled General A Fund \$62,899.05 vouchers #94-131, General B Fund \$1,069.91 vouchers #28-33, Highway DB \$17,637.73 vouchers #23-34, PA-A3 \$2,776.91 vouchers #5-6, PA-DB2 \$4,894.62 voucher # 2. *Councilman Stone made a motion to pay the April bills; seconded by Councilman McCartney and it carried by a vote 5 -0.*

REGULAR MEETING – Tuesday, April 26, 2011 at 7:30 PM in the Courtroom

ADJOURNMENT *was at 9:10 p.m. on a motion by Councilman Miller; seconded by Councilman McCartney and it carried by a vote 5-0.*

Respectfully submitted

Michele M. Smith

Michele M. Smith,
Town Clerk