

**SEPTEMBER 19, 2007
REGULAR TOWN BOARD MEETING**

Town Hall

7:00 P.M.

John Gerace, Councilman led the pledge to the flag.

Roll Call

Present: Supervisor Post
Councilwoman Michalak
Councilman Gerace

Absent: Deputy Supervisor Underhill

Others

Present: Town Clerk Morasco

The Supervisor called the meeting to order at 7:00 P.M.

MINUTES:

August 15, 2007 Public Hearing-Local Law #2 of 2007 –“A Local Law Amending Local Law #1 of 1996, to Provide Minimum Requirements for Meeting Attendance & Training for Planning Board and Zoning Board of Appeals Members”: Motion Councilman Gerace, second Councilwoman Michalak to approve the minutes as written.

MOTION CARRIED by unanimous vote (3-0)

August 15, 2007 Regular Town Board Meeting: Motion Councilman Gerace second Councilwoman Michalak to approve the minutes as written.

MOTION CARRIED by unanimous vote (3-0)

September 12, 2007 Special Town Board Meeting: Motion Councilman Gerace, second Councilwoman Michalak to approve the minutes as written.

MOTION CARRIED by unanimous vote (3-0)

SPEAKERS:

Mark Davis, Town Resident addressed the Town Board with concern of the proposal by Genesee County Chapter New York State Association for Retarded (ARC) to construction a handicap accessible home on Hartshorn Road for the purpose of operating a certified residence offering alternative living opportunities to six (6) individuals with developmental disabilities. Mr. Davis was concerned with how it would affect his property taxes and if the ARC merges with another entity, what guarantee is there that they won't expand. He was also concerned that there was no comprehensive floor plan and that he has not had enough time to talk to neighbors of existing ARC homes to know whether he supports it or not. Supervisor Post informed Mr. Davis that there is not a Town property tax and there are not guarantees on expansion, which is addressed with zoning.

Donna Saskowski, Executive Director of Genesee County Chapter NYSARC, Inc. addressed the Town Board. The ARC is asking the Town for support, once they receive the support of the Town, then they will invest in plans and abide by the building permits and codes. Currently the ARC has 9 homes, 9 apartments and 60 people in their residential programs. They have received only one complaint in the last 3 or 4 years. An informational meeting was held at the ARC, last evening for residents in the Hartshorn Road vicinity.

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RESOLUTION NO. 153:

Supervisor Post offered the following:

WHEREAS, proposed Local Law #3 of 2007 of the Town of Batavia entitled "A Local Law to Amend the Procedures and Regulations for Fill Permits within the Town of Batavia", which proposed Local Law in its final form was presented to the Town Board at the meeting held on August 15, 2007, and a copy thereof was kept with the Town Clerk and copies both laid upon the desks of the members of said Town Board Members and mailed to each member of the Town Board Members not in attendance at said meeting; and

WHEREAS, a public hearing on the advisability of enacting said proposed Local Law was held on September 19, 2007, before this Town Board, pursuant to public notice duly published in The Daily News according to law, at which time all interested persons were heard; and

WHEREAS, the Town Board of the Town of Batavia, New York is of the opinion that adoption of said proposed Local Law #3 of 2007 is in the best interest of the Town of Batavia, New York,

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Batavia, New York that said proposed Local Law #3 of 2007 be and the same hereby is adopted; and

BE IT FURTHER RESOLVED, that a certified copy of said Local Law #3 of 2007 be filed with the New York State Secretary of State in accordance with Law.

Second by: Councilman Gerace
APPROVED by unanimous vote (3-0)

RESOLUTION NO. 154:

Councilwoman Michalak offered the following:

**SEQR DETERMINATION OF NON-SIGNIFICANCE
ADD SECTION 235-63 TO ZONING ORDINANCE-REVOCATION OF PERMIT**

WHEREAS, in accordance with the State Environmental Quality Review Act (SEQRA) the proposed amendment to the Code of the Town of Batavia to add Section 235-63 is an Unlisted Action; and

WHEREAS, the Batavia Town Board acting as Lead Agency has reviewed the Short Environmental Assessment Form addressing the proposed zoning amendment (attached); and

WHEREAS, it has been determined that the proposed amendment will not have an adverse impact on the environment.

RESOLVED, the Batavia Town Board hereby directs the Supervisor to prepare the Negative Declaration Notice of Determination of Non-Significance to amend the Code of the Town of Batavia to

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include Section 235-63 and administer it accordingly.

Second by: Supervisor Post

APPROVED by unanimous vote (3-0)

RESOLUTION NO. 155:

Councilman Gerace offered the following:

RESOLUTION ADOPTING LOCAL LAW #4 OF 2007

WHEREAS, proposed Local Law #4 of 2007 of the Town of Batavia entitled “A Local Law to Amend the Code of the Town of Batavia Pertaining to the Zoning Ordinance”, which proposed Local Law in its final form was presented to the Town Board at the meeting held on August 15, 2007, and a copy thereof was kept with the Town Clerk and copies were both laid upon the desks of the members of said Town Board and mailed to each member of the Town Board not in attendance at said meeting, at least ten (10) days, exclusive of Sundays, prior to its final passage; and

WHEREAS, ten (10) days written notice of any proposed regulations, restrictions or boundaries of districts within the Town and amendments thereto was given by mail by the Town to each person or persons required to be notified pursuant to New York State Town Law Section 7-264(2); and

WHEREAS, a public hearing on the advisability of enacting said proposed Local Law was held on September 19, 2007, before this Town Board, pursuant to public notice duly published in The Daily News according to law, at which time all interested persons were heard; and

WHEREAS, all required referrals to the Genesee County Planning Board and the Batavia Town Planning Board, as well as all required publications and postings, have been properly completed; and

WHEREAS, the Town Board of the Town of Batavia, New York, is of the opinion that adoption of said proposed Local Law #4 of 2007 is in the best interests of the Town of Batavia, New York,

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Batavia, New York that said proposed Local Law #4 of 2007, be and the same hereby is adopted, and such Local Law shall be entered in the minutes of the Batavia Town Board; and

BE IT FURTHER RESOLVED, that the Code of the Town of Batavia is hereby amended as more fully set forth in said Local Law; and

BE IT FURTHER RESOLVED, that certified copies of said Local Law #4 of 2007 be filed with the New York State Secretary of State in accordance with Law; and

BE IT FURTHER RESOLVED, that a summary of the provisions pursuant to Local Law #4

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of 2007 be published once in The Daily News and that an affidavit of publication thereof be filed with the Town Clerk; and

BE IT FURTHER RESOLVED, that this Local Law shall become effective as provided by law upon its filing in the Office of the Secretary of State.

Second by: Councilwoman Michalak
APPROVED by unanimous vote (3-0)

NOTICE OF ADOPTION OF AMENDMENT TO
THE CODE OF THE TOWN OF BATAVIA
PERTAINING TO THE ZONING ORDINANCE

PUBLIC NOTICE is hereby given that the Town Board of the Town of Batavia, New York, on the 19th day of September, 2007, adopted Local Law #4 of 2007 entitled "A Local Law to Amend the Code of the Town of Batavia Pertaining to the Zoning Ordinance". Said Local Law provides for an amendment to the Code of the Town of Batavia pertaining to the Zoning Ordinance, which amendment is summarized as follows:

Addition of provisions to allow for the revocation of Permits and Special Use Permits by the Board that authorized and granted the Permit, if the terms and conditions of the Permit are violated.

PLEASE TAKE FURTHER NOTICE that this Notice represents only a summary of the Code amendment adopted. A complete copy of the Local Law is on file at the Office of the Batavia Town Clerk, located at 3833 West Main Street Road, in the Town of Batavia, New York, and is open for public inspection during regular office hours.

Dated: Batavia, New York
September 19, 2007

Teresa M. Morasco, Town Clerk
Town of Batavia, New York

RESOLUTION NO. 156:

Supervisor Post offered the following:

ESTABLISH LINE ITEMS
FOR CAPITAL PROJECT-SAILE DRIVE SEWER

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RESOLVED, the Batavia Town Board hereby establishes the following line items:

HK – SAILE DRIVE SEWER DISTRICT

HK1380.400 Fiscal Agent
HK1420.400 Legal Expense
HK1440.400 Engineering
HK1989.400 Advertising
HK8340.400 Transmission/Collection – Construction
HK9730.600 BAN – Principle
HK9730.700 BAN – Interest

Second by: Councilman Gerace

APPROVED by unanimous vote (3-0)

RESOLUTION NO. 157:

Councilwoman Michalak offered the following:

**LOCATION OF A CERTIFIED RESIDENCE TO OFFER ALTERNATIVE LIVING
OPPORTUNITIES FOR INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES – APPROVAL THEREOF**

RESOLVED, the Batavia Town Board, as recommended by Genesee County Chapter New York State Association for Retarded Citizens, hereby agrees to the location it has selected on Hartshorn Road, Batavia, New York, to construction a handicap accessible home for the purpose of operating a certified residence offering alterative living opportunities to six (6) individuals with developmental disabilities.

Second by: Councilman Gerace

APPROVED by unanimous (3-0)

RESOLUTION NO. 158:

Councilman Gerace offered the following:

**RESOLUTION SOLICITING THE STATE'S LEGISLATIVE BRANCH OF GOVERNMENT
TO OVERRIDE THE GOVERNOR'S VETO OF

ASSEMBLY BILL 10710-A AND SENATE BILL S -7354**

WHEREAS, the Town maintains a local Town Court system at considerable expense in furtherance of the pursuit of justice within the Town of Batavia; and

WHEREAS, the New York State Police Superintendent, to save in officer compensation, has initiated a new policy prohibiting State Police Troopers, as Count law §700 Prosecutors as designated by the Genesee county district Attorney, from participating in the well and long time established

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prosecutorial negotiations necessary for the timely and proficient pursuit of justice within this Town (the prosecutorial arm of our Town Court system of justice has been substantially handicapped, leading to more trials or case dismissals); and

WHEREAS, the overwhelming majority of imposed fines and all of the surcharges are sent to the State of New York by the Town ostensibly for the advancement of criminal justice services, including State Police cost, and appointment of a Town Prosecutor (as the Superintendent desires) will result in additional Town Taxpayer expense; and

WHEREAS, in the same form of State Legislative Bills, Assembly Bill 10710-A and Senate Bill S7354 the State's Legislature recently adopted bills essentially reversing the Superintendent's policy in recognition of its adverse impact upon local Courts, Governments & Taxpayers; and

WHEREAS, the New York State Governor, the Honorable Eliot Spitzer, just recently and unfortunately vetoed that legislation and returned it to the Legislative Branch of State Government,

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Batavia solicits the State's Legislative Branch of Government to timely **OVERRIDE THE GOVERNOR'S VETO** thereby permitting the State Police Troopers acting as duly authorized County Law §700 Prosecutors to fully act as permitted by law without interference by improper order of the Superintendent of State Police, a member of the Executive and not Judicial Branch of State Government.

Second by: Councilwoman Michalak
APPROVED by unanimous vote (3-0)

RESOLUTION NO. 159:

Supervisor Post offered the following:

**PROPOSAL OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
RURAL DEVELOPMENT PRE-ELIGIBILITY DETERMINATION**

WHEREAS, the Town wishes to retain Stuart I. Brown Associates to prepare the Town's Pre-Eligibility Determination (PED) for submission to Rural Development to determine the Town's eligibility for loan and grant assistance for the proposed extension of public water service to serve areas along Rose and Alexander Roads; and

WHEREAS, the cost to prepare the PED's is \$1,800.00 (proposal attached).

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the preparation of the Pre-Eligibility Determination (PED) for submission to Rural Development at a cost not to exceed one thousand, eight hundred dollars (\$1,800.00) and to execute an agreement between the Town of Batavia and Stuart I. Brown Associates.

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Second by: Councilman Gerace
APPROVED by unanimous vote (3-0)

RESOLUTION NO. 160:

Councilwoman Michalak offered the following:

**PROPOSAL OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
SMALL CITIES IMMINENT THREAT APPLICATION-
ELLICOTT STREET ROAD TOWNLINERoad WATER PROJECT**

WHEREAS, the Town of Batavia needs to submit a Small Cities Imminent Threat Application and the required NEPA documentation for the Ellicott Street Road-Townline Road Water Project to the Office for Small Cities; and

WHEREAS, Stuart I. Brown Associates submitted a proposal to prepare the Small Cities Imminent Threat Application at a cost of three thousand dollars (\$3,000.00) (proposal attached).

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates to prepare the aforementioned application at a cost of three thousand dollars (\$3,000.00) and to execute an agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilman Gerace
APPROVED by unanimous vote (3-0)

SUSPEND THE RULES-Motion Councilman Gerace, second Councilwoman Michalak to suspend the rules to introduce an additional resolution.

MOTION CARRIED by unanimous vote (3-0)

RESOLUTION NO. 161:

Councilman Gerace offered the following:

**APPROVAL OF CHANGE ORDER 2007-02
OPERATION & MAINTENANCE- TOWN OF BATAVIA
LANDFILL SUPERFUND SITE**

WHEREAS, Arcadis of New York, Incorporated (Arcadis BBL) (formerly Blasland, Bouck and Lee, Incorporated) is under contract with the Town of Batavia and the City of Batavia to provide Engineering Services at the Town of Batavia Landfill Superfund Site; and

WHEREAS, by agreement the Town of Batavia and City of Batavia are requested to fund the Operation and Maintenance activities at the Site; and

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WHEREAS, Arcadis BBL has submitted a letter detailing the scope of work and cost estimate for providing Operation and Maintenance Engineering Services at the Site for 2007 (attached); and

WHEREAS, the cost for the service is estimated at four thousand, one hundred, thirty-two dollars (\$4,132.00), seventy-five percent (75%) to be incurred by the City of Batavia and twenty-five percent (25%) to the Town.

RESOLVED, the Town of Batavia hereby authorizes the Supervisor to execute the attached Change Order Approval Form for the aforementioned Engineering Services to be performed by Arcadis BBL., at the Town of Batavia Landfill Superfund Site.

Second by: Supervisor Post

APPROVED by unanimous vote (3-0)

Abstract No. 9-2007: Motion Councilman Gerace, second Councilwoman Michalak to authorize the Supervisor to pay the following vouchers:

General	\$ 292,616.41
Highway	10,046.49
Sewer No. 1	1,906.43
Sewer No. 2	1,501.23
Water	17,315.50
Pearl Water	4,845.69
Wilkinson Water	9,739.40
Putnam/Shepard Water	16,847.14
Ellicott/Townline Water	3,375.75
Lovers Lane Water	<u>175,523.80</u>
TOTAL	\$ 533,717.84

Check numbers 11700 thru 11786

MOTION CARRIED by unanimous vote (3-0)

DEPARTMENT REPORTS:

Water/Wastewater: The Supervisor reported for the Water/Wastewater Department on the following:

Saile Drive Sewer project is progressing.

Lovers Lane- Making the final payment to the contractor for the Lovers Lane Road Water Project.

BAN- Received the Bond Anticipation Note documents for the construction of the water districts.

USDA Rural Development- Waiting for USDA Rural Development approval of the contract that was awarded last week for the Water Districts.

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Supervisor's Report:

Status Report on expenditures and revenues is available for the Board's review. The investment sheets will be entered into the minute book. The monies are invested in CD's and are paying a rate of 5.26% and 5.24% respectively.

Budget Workshop – Scheduled for Wednesday, September 26 at 7:00 P.M. to meet with department heads. The tentative budget will be filed with the Town Clerk on September 30 (30th falls on a Sunday -October 1).

GAM- The next GAM meeting will be in Elba September 20 at 7:00 P.M. at Paulina's Restaurant.

INVENTORY CLERK-Motion Councilman Gerace, second Councilwoman Michalak authorizing the hiring of Mary Cordes of LeRoy, New York as Inventory Clerk at a rate of \$12.00 per hour, not to exceed ten hours per week.

MOTION CARRIED by unanimous vote (3-0)

VIDEO TAPING RATE: Motion Councilman Gerace, second Councilwoman Michalak authorizing an increase to Alicia Kaus's hourly rate from \$35.00 to \$45.00 for Video Taping Town Board Meetings, effective October 1, 2007 (letter of increase attached).

MOTION CARRIED by unanimous vote (3-0)

COMMUNICATIONS:

The Town Clerk reported on the following:

August Town Clerk monthly report – collected a total \$11,263.99, remitted \$5,163.61 to the Supervisor for the Local Share.

COMMITTEE REPORTS:

Cable Franchise- Councilwoman Michalak reported that she has not heard back from Time Warner.

Parks & Recreation- Councilman Gerace reported he is working on the development of Parks and Recreation.

ADJOURNMENT:

Motion Councilwoman Michalak, second Councilman Gerace to adjourn the Regular Town Board Meeting at 7:48 P.M.

MOTION CARRIED by unanimous vote (3-0)

Respectfully submitted,

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Teresa M. Morasco
Town Clerk

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Teressa M. Morasco
Town Clerk